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APPEAL
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PAGE 2

IN THE

Supreme Court of the United States

OCTOBER TERM 1972

NO. 72-147

WILLIAM SULLIVAN, et al.

VERSUS

WILLIAM SULLIVAN, et al.

FRANKLIN SMITH, et al.

VERSUS

JOHN HARRIS, et al.

FRANKLIN SMITH, et al.

VERSUS

THE HONORABLE JUDGE, JR. et al.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF TEXAS

JAMES E. HILL,

Attorney General of Texas

P. O. Box 13048

Austin, Texas 78711

LEWIS A. JONES

Asst. Attorney General

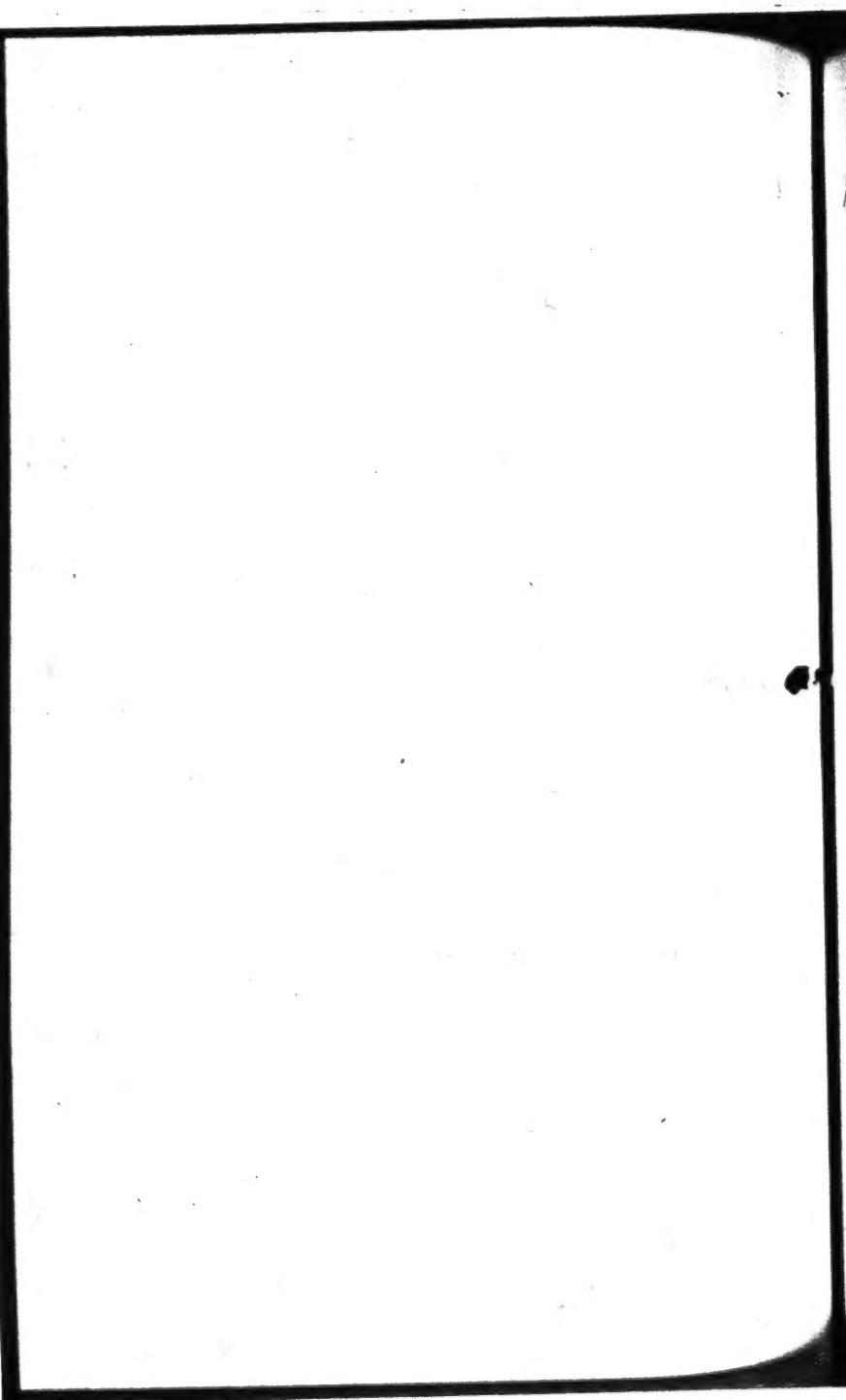
LEWIS J. JONES

Spl. Assistant Attorney General

RECEIVED AND RECORDED JAMES E. HILL, JR., 1972

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October 10, 1972



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RECORD OF PROCEEDINGS

CURTIS GRAVES, ET AL,
Plaintiffs

I
I
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Vs.

NO. A-71-CA-142

BEN BARNES, ET AL,
Defendants.

I
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DIANA REGESTER, ET AL,
Plaintiffs,

I
I
I

Vs.

NO. A-71-CA-143

BOB BULLOCK, ET AL,
Defendants.

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JOHNNY MARRIOTT, ET AL,
Plaintiffs,

I
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I

Vs.

NO. A-71-CA-144

PRESTON SMITH, ET AL,
Defendants.

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I

VAN HENRY ARCHER, JR.,
Plaintiff,

I
I
I

Vs.

NO. A-71-CA-145

PRESTON SMITH, ET AL,
Defendants.

I
I
I

HEARD AT: AUSTIN, TEXAS

ON: December 3, 1972

VOLUME: I

1 APPEARANCES:

2
3 CIVIL ACTION NO. A-71-CA-142, CURTIS GRAVES ET AL VERSUS
4 BEN BARNES ET AL

5 HON. STUART M. MELKIN and
6 HON. DAVID H. BERG
American Civil Liberties Union
2012 First National Life Building
Houston, Texas

ATTORNEYS FOR PLAINTIFFS

8 HON. SAMUEL D. McDANIEL and
9 HON. LEWIS JONES
Assistant Attorneys General
P. O. Drawer 12548
10 Capitol Station
11 Austin, Texas 78711

12 HON. LEON JAWORSKI and
13 HON. ALTON F. CURRY
Fulbright, Crooker, Freeman, Bates & Jaworski
8th Floor, Bank of Southwest Building
14 Houston, Texas 77002

ATTORNEYS FOR DEFENDANTS
STATE OF TEXAS ET AL

15
16 CIVIL ACTION NO. A-71-CA-143, DIANA REGISTER ET AL VERSUS
17 BOB BULLOCK ET AL

18 HON. OSCAR H. MAUSY
Mullinax, Walls, Mausy & Raab, Inc.
1601 National Bankers Life Building
19 Dallas, Texas 75201

20 HON. RONALD L. CLOWER
21 Clower & Stanford
1212 San Jacinto
22 Dallas, Texas 75202

ATTORNEYS FOR INTERVENORS
BICK REED ET AL

APPEARANCES (Continued):

HON. JOHN L. ROACH
Roach and Robertson
2620 Republic National Bank Tower
Dallas, Texas 75201

ATTORNEYS FOR INTERVENORS
MEMBERS OF THE REPUBLICAN
PARTY OF DALLAS

HON. THOMAS G. GEE
Graves, Dougherty, Gee, Heron, Moody & Garwood
204 Austin National Bank Building
Austin, Texas 78701

ATTORNEY FOR INTERVENORS
STATE REPUBLICAN PARTY AND
SMITH COUNTY REPUBLICAN PARTY

HON. DAVID R. RICHARDS
Attorney at Law
600 W. 7th Street
Austin, Texas 78701

ATTORNEY FOR PLAINTIFFS AND
INTERVENORS AFL-CIO ET AL

HON. E. BRICE CUNNINGHAM
Attorney at Law
Room 202, 2606 Forest Avenue
Dallas, Texas 75215

ATTORNEY FOR INTERVENORS
GEORGE L. ALLEN ET AL

HON. WALTER L. IRVIN
Attorney at Law
301 N. Market Street
Dallas, Texas 75202

HON. CLEO STEELE
Attorney at Law
2818 Pennsylvania
Dallas, Texas 75215

ATTORNEYS FOR INTERVENORS
THELMA WASHINGTON ET AL

APPEARANCES (Continued):

HON. ED IDAR, JR.
Attorney at Law
319 Artes Building
San Antonio, Texas 78205

HON. FRANK HERNANDEZ
Hernandez, Casoria & Alexander
300 Southwest Building
Dallas, Texas 75202

ATTORNEYS FOR INTERVENORS
JOE BERNAL ET AL

HON. SAMUEL D. McDaniel
HON. LEWIS JONES
Assistant Attorneys General
P. O. Drawer 12548
Capitol Station
Austin, Texas 78711

HON. LEON JAWORSKI and
HON. ALTON F. CURRY
Fulbright, Crocker, Freeman, Bates & Jaworski
8th Floor, Bank of Southwest Building
Houston, Texas 77002

ATTORNEYS FOR DEFENDANTS
STATE OF TEXAS ET AL

HON. EARL LUNA
Attorney at Law
1002 Dallas Federal Savings Building
Dallas, Texas 75201

ATTORNEY FOR DEFENDANT ROY ORR

CIVIL ACTION NO. A-71-CA-144, MARRIOTT ET AL VERSUS
PRESTON SMITH ET AL

HON. ROBERT M. GREENBERG
1105 Mercantile Securities Building
Dallas, Texas 75201

ATTORNEY FOR PLAINTIFFS

APPEARANCES (Continued):

HON. JOHN L. ROACH
Roach and Robertson
2620 Republic National Bank Tower
Dallas, Texas 75201

HON. THOMAS G. CROUCH
Attorney at Law
2630 Republic National Bank Building
Dallas, Texas 75201

ATTORNEYS FOR INTERVENORS
MEMBERS OF THE REPUBLICAN
PARTY OF DALLAS

HON. SAMUEL D. McDANIEL and
HON. LEWIS JONES
Assistant Attorneys General
P. O. Drawer 12548
Capitol Station
Austin, Texas 78711

HON. LEON JAWORSKI and
HON. ALTON E. CURRY
Fulbright, Crooker, Freeman, Bates & Jaworski
8th Floor, Bank of Southwest Building
Houston, Texas 77002

ATTORNEYS FOR DEFENDANTS
STATE OF TEXAS ET AL

CIVIL ACTION NO. A-71-CA-145, VAN HENRY ARCHER, JR., ET AL
VERSUS PRESTON SMITH ET AL

HON. NATHAN W. EASON
HON. J. DOUGLAS McGUIRE
400 Alamo National Building
San Antonio, Texas 78205

ATTORNEYS FOR PLAINTIFFS

APPEARANCES (Continued):

HON. SAMUEL D. McDANIEL and
HON. LEWIS JONES
Assistant Attorneys General
P. O. Drawer 12548
Capitol Station
Austin, Texas 78711
HON. LEON JAWORSKI and
HON. ALTON F. CUREY
Fulbright, Crooker, Freeman, Bates & Jaworski
8th Floor, Bank of Southwest Building
Houston, Texas 77002

**ATTORNEYS FOR DEFENDANTS
STATE OF TEXAS ET AL**

HON. ARMAND DEEFNER
Attorney at Law
Lawyers Committee for Civil Rights Under Law
Washington, D. C.

**ATTORNEY FOR AMICI LAWYERS
COMMITTEE FOR CIVIL RIGHTS AND
LEAGUE OF WOMEN VOTERS**

BE IT REMEMBERED that heretofore, on the
3rd day of January, 1972, before a panel composed of the
HONORABLE IRVING L. GOLDBERG, Judge, U. S. Court of Appeals,
Fifth Circuit, HONORABLE WILLIAM WAYNE JUSTICE, U. S.
District Judge, Eastern District of Texas, and HONORABLE
JOHN H. WOOD, JR., U. S. District Judge, Western District
of Texas, the above consolidated civil actions came on to
be heard, at which time the following proceedings were
had:

1 AUSTIN, TEXAS

2 JANUARY 3, 1972

3 FIRST DAY OF TRIAL

4
5 JUDGE JUSTICE: Please be seated.

6 JUDGE GOLDBERG: Good morning, ladies
7 and gentlemen.

8 We have for hearing this morning a
9 hearing on consolidation of four cases, A-71-CA-
10 142 in the Southern District of Texas, Houston;
11 A-71-CA-143, Eastern District, Tyler Division;
12 A-71-CA-144 from the Northern District, Dallas
13 Division; and A-71-CA-145 from the Western
14 District of Texas.

15 I would first like to express my
16 appreciation to all Counsel and everyone else
17 who has cooperated in bringing this case to
18 hearing this morning. Everyone has recognized
19 that time is a very, very important factor. I
20 want to say on behalf of all the Judges, three
21 of us here, that we come here without any pre-
22 judgments or preconceptions. We implore you to
23 be as economical and as expeditious in the
24 presentation of your case as is possible for
25 the very simple reason that we are under a time

schedule, and while no one has made up his mind in any degree, it is almost inevitable -- I would say it is inevitable -- that at the conclusion someone might be disappointed or grieved at whatever judgment is finally entered in this case, and I seek the unanimous opinion of the three of us but whatever that judgment is, and whoever may be aggrieved in the process of that judgment, that that party have ample time to get to the Supreme Court in order to rectify or to change any error that may be charged against this three-judge court, and that is the primary reason why time is of such essence in this case.

Judge Wayne Justice has been the Managing Judge, so to speak, of these cases. He is very familiar with what has gone on before, and for that reason I am going to ask him to be the Administrator of these proceedings, knowing from his experience, we will be able to act more expeditiously, and with that preliminary statement, I now ask Judge Justice to proceed with the hearing.

JUDGE JUSTICE: Thank you, Judge Goldberg.

Are the parties ready to proceed in

the Houston Division case?

MR. MELKIN: Your Honor, Stuart Melkin for the Plaintiff. Mr. Curry and I are about 30 seconds away from assembling the final amendment to the Pretrial Order which lists the exhibits, and other than that, with the same reservation of keeping our record open since we haven't read the depositions, we are ready to proceed.

MR. CURRY: That is our position, Your Honor.

JUDGE JUSTICE: Do the parties desire to make an opening statement, or are you content with what has been done in stating your position in the Final Pretrial Order?

MR. MELKIN: We will waive opening statement.

MR. CURRY: We will also, Your Honor.

MR. McDANIEL: Your Honor, I wonder if in the interest of time and to avoid the necessity of asking permission of the Court, if all Counsel of record might be authorized to quietly leave and enter the courtroom during the trial because we are working on the other cases as we go along.

JUDGE JUSTICE: Yes, try to avoid as much disturbance as possible.

MR. CURNY: Your Honor, we have an associate with Mr. Jaworski and I, that is working with us. He hasn't appeared of record. If we may, we would like to identify him, because he is not here yet, but he is coming. His name is William Young.

JUDGE JUSTICE: Very well.

JUDGE GOLDBERG: We will be happy to have him.

JUDGE JUSTICE: All right, you may proceed.

MR. WELKIN: Thank you, Your Honor.

MR. CURNY: Your Honor, we should make known to the Court that Mr. Welkin and Mr. Barg, as well as ourselves, have some exhibits on their way. We have identified them and they have been numbered, but they haven't arrived. Some are coming from Houston and some are in the Capital Building, but they do appear as a part of the Pretrial Order.

JUDGE JUSTICE: As long as they do appear and have been identified and we know what they are and each side knows what they are---

1 MR. CUNY: Yes, sir, and the appro- 1
2 priate objections, if there were any objections
3 to be made, have been made.

4 JUDGE GOLDBERG: Thank you.

5 JUDGE JUSTICE: Very well. Please
6 proceed.

7 MR. MELKIN: Your Honor, Plaintiffs
8 call Professor Richard Murray.

9 JUDGE JUSTICE: Professor Richard
10 Murray, come forward, please.

11 Raise your right hand and be sworn.

12
13 (REPORTER'S NOTE: The witness
14 was duly sworn.)

15
16 JUDGE JUSTICE: Professor Murray,
17 please be certain to keep your voice up.

18 MR. MELKIN: Your Honor, I understand
19 the procedure to be (indicating)---.

20 JUDGE JUSTICE: Yes, conduct your
21 interrogation from the lectern.

RICHARD W. MURRAY,

a witness called by the Plaintiffs, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. BELKIN:

Q Please state your full name.

A Richard W. Murray.

Q And how are you employed?

A I am Associate Professor of Political Science at the University of Houston.

Q Do you have any specialty within the realm of Political Science?

A My specialties in terms of teaching and research are in the area of political parties and electoral behavior.

Q And have you in the past had dealings or occasions to deal with the electoral process as it relates to the local area that the University of Houston is in?

A Yes, I have. I have for about six years now been studying and compiling data on the various

DIRECT EXAMINATION - Murray

13

elections that have occurred within Harris County, especially at the precinct level. I have presented one paper relative to that and am at the present time working on a chapter in a book that hopefully will be published next year on electoral behavior in Harris County.

Q Could you tell the Court your education?

A I have a Bachelor's and Master's Degree in Government from Louisiana State University and a Ph.D. from the University of Minnesota in Political Science.

Q And how long have you been an instructor or professor?

A Six years.

Q Has all that been at the University of Houston?

A Yes.

Q Have you had the occasion to publish any books or portions of books in this area?

A I am the co-author of a book called Texas Politics published by Harper and Row last year.

(No omission here.)

1 DIRECT EXAMINATION - Murray

2 MR. NELKIN: Your Honor, we submit this
3 witness is a qualified expert in the electoral
4 process of Harris County and we would request the
5 Court so qualify him.

6 MR. CERRY: May it please the Court, we
7 don't know what questions he will be asked and
8 therefore we would not know whether or not he is
9 qualified to answer on a particular issue.

10 JUDGE GOLDBERG: You have the right to
11 object to specific questions.

12 MR. CERRY: Thank you.

13 JUDGE GOLDBERG: Proceed.

14 MR. NELKIN CONTINUES:

15 Q Professor Murray, in the course of your studies
16 of the electoral process in Harris County could you tell the
17 Court the original sources or types of things that you used
18 to draw whatever conclusions you have drawn?

19 A Basically, precinct electoral data, the returns
20 of elections since 1956 in Harris County, in the City of
21 Houston, the Houston Independent School District.

22 Q All right. And, have you also had the
23 occasion to study census tract data?

24 A Yes, the 1960 and 1970 census tract data.

25 Q All right. With that background in mind, I

1 wonder if you might tell the Court-- just give the Court an 15
2 analysis of the topography of Houston as to where Blacks
3 live in the city, population shifts, income and that type of
4 thing.

5 A Well, in a minute or two, and without the aid
6 of maps, I would say that Houston is a city racially dis-
7 persed by population with five major ghettos and a dozen or
8 more small concentrations, and in the recent years it has
9 been more concentration in the Black community, somewhat
10 similar to what happened in Chicago in the early part of
11 the twentieth century. Now, you have a growing Black
12 population, growing more rapidly than the white population,
13 particularly within the inner city part of the city, that is
14 becoming relatively homogeneous; the older Black ghettos and
15 all are moving together and the Whites are moving out from
16 the center of the city, from the center of the county and
17 to the outlying suburbs. Now, there is a smaller Mexican-
18 American minority within the city of Houston, but it is the
19 most rapidly growing section in terms of ethnicity.
20 It more or less is wedged in between the largest concen-
21 tration of Blacks. Also, it is located in the central city
22 part of Houston-- primarily located. It is more dispersed,
23 still, in the sense that there are no census tracts that are
24 entirely Mexican-American within the city of Houston.

25 MR. NELKIN: Your Honor, at this time we

offer into evidence without objection, pursuant to the pretrial order, Plaintiffs' Exhibits 18 and 9.

JUDGE JUSTICE: In order that the record may reflect what the situation is here, any exhibit which is listed in your final pretrial order to which no objection has been made in the final pretrial order is now received in evidence, so it won't be necessary to tender them in each instance.

MR. CURRY: Should we, then, make our objection at this time and call it to the attention of the Court?

JUDGE JUSTICE: Yes, you should. If there has been an objection made in the final pretrial order please call it to the attention of the Court.

MR. CURRY: What exhibits are these?

MR. NELKIN: They are 18 and 9.

MR. NELKIN CONTINUES:

Q Dr. Murray, you had stated that you were without the assistance of maps, and that was really my fault. What we have here in evidence is a Harris County census tract map. We also have the lines of the present senatorial districts in Harris County as they have been enacted into law with the appropriate numbers, and we also have shading which simply reflects the shading of the bureau of the census information as to poverty areas in Houston. Now, could you

1 enlighten the Court as to the location of the Black city or
2 Black Harris County dweller?
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1 Direct Examination - Murray

2 A Well, there is a very high difference, of course,
3 between the Mexican-American population in the shaded or
4 poverty areas that are displayed on the map. In fact, there
5 are probably only six or eight census tracts that are
6 predominantly Black that are not shaded and there are a very
7 few Anglo census tracts that are shaded, so as a rough
8 blueprint of the poverty areas, or the minority areas, or
9 the minority areas in Harris County-- not without a few
10 exceptions, but generally.

11 Q All right. Now, I would like to also have
12 your comments--

13 JUDGE GOLDBERG: How many senators are from
14 Harris County?

15 A There are four senators in the present
16 legislature, and a portion of the county is included in
17 Senator Schwartz's district. Under the reapportionment plan
18 there will probably be five senators elected from Harris
19 County. Four districts are entirely within the county, a
20 fifth senate district is five-- six Harris and one-- six
21 ^{San} Fort Binn County. And, Schwartz retains-- or the Schwartz
22 district-- retains a small slice. So, five, roughly.

23 MR. MELKIN: Your Honor, for clarification,
24 this is also a senate district.

25 JUDGE JUSTICE: Would it assist you in the

1 Presentation of this exhibit to have the witness
2 down by the exhibit?

3 MR. NELKIN: Not at this time. I think I
4 might like to call him down later.

5 JUDGE JUSTICE: All right.

6 MR. NELKIN: I don't know if you can see that
7 number, we neglected to put it in, but that is
8 Senate District 13 as enacted by law.

9 JUDGE JUSTICE: Keep your voice up, please.

10 MR. NELKIN CONTINUES:

11 Q Now, could you also, Dr. Murray, based upon
12 your study of census tract information give us an analysis
13 of housing patterns within Harris County. That is to say,
14 owner-occupied versus renter-occupied?

15 A I think the pattern in Harris County is a
16 similar pattern to every metropolitan area in the United
17 States, and I think the city primarily has the highest
18 portion of deteriorated, dilapidated housing. By the census
19 the outlying areas become more owner-- owned housing,
20 proportionately with higher median value of the houses,
21 higher rent, where there are rental units, fewer dilapidated
22 houses, fewer dilapidated houses. Of course, the poverty
23 areas as shaded on the map are the areas that have the
24 highest proportion of renters, the most dilapidated or
25 deteriorated housing.

Q I would like, if I could, now to go into an analysis of voting patterns in Harris County. And, I would like for you, if you could, to deal with the question of registration, level of registration participation in primaries, general elections and that kind of thing and distinguish between Blacks and Whites in Harris County.

A All right.

MR. CURRY: Your Honor, we would object to his statement at this time based on-- there has been no predicate layed for the purpose of qualifying him to know the patterns of the vote registration and the participation in the legal process.

JUDGE GOLDBERG: Did he testify that he had studied the registration process?

A I am currently working on a chapter-- a book that is dealing explicitly with that problem.

JUDGE GOLDBERG: Overrule the objection.

Proceed.

MR. HELKIN CONTINUES:

Q Please proceed, Dr. Murray.

A Okay. Within the Black community, first things first, registration, approximately sixty per cent of the adult Blacks up through 1971 in recent years have been registered to vote. The average throughout the county is sixty per cent, and in some precincts it is much higher,

1 eighty per cent, and some lower. In the Mexican-American
2 community the percentage is considerably lower, forty-five
3 per cent or so. In the Anglo community the most important
4 variable is the socioeconomic characteristics of the area.
5 There are census tract areas in Houston, in the more affluent
6 districts, that have more than ninety-five per cent of the
7 adults registered as voters. There are in the Little York
8 Road area, white blue collar working area, which is about
9 where the six is on the map--

10 Q Excuse me just one second. Could you come
11 down here and point this out to the Court?

12 A Generally, most of the Whites live outside the
13 shaded area of the county. On the west side of Harris
14 County you have generally the more affluent Whites; there
15 are affluent pocket scattered around in other parts of the
16 county. Registration is extremely high in these areas in
17 terms of potential numbers of adults, ninety to ninety-five
18 per cent, generally <which means that in proportion to their
19 population these areas have disproportionate amount of
20 political power.> In an analysis that we did in 1970 of four
21 different districts in the city of Houston, one Chicano, one
22 Black, one White blue collar, and one White middle class,
23 all of which had the same population, the white area cast
24 over an average of five elections, forty per cent of the vote
25 the white blue collar area about twenty-one per cent and the

1 Black area about twenty-two per cent and the Chicago about
2 sixteen or seventeen per cent.

Direct Examination - Murray

Q Now, is there also some correlation between registration and participation of those registered?

A The patterns are not so stark, but generally, the more affluent white areas have the heaviest participants. However, in recent years black participation has improved. And in the recent election, it was up to the level of the highest white areas, so the difference is registration in terms of black-white, potential political power. Whites are registered to a high degree and tend to vote somewhat heavily although there are certainly exceptions that could be cited to that.

Q All right, now, in your -- incidentally, I might ask, going into qualifications, have you in the past been asked and in fact, have been employed by a particular TV station in Houston to make election analysis profiles?

A Yes, sir. I think I participated in four such elections.

Q For what station?

A KHOU.

Q And in the course of your activities there, you take the recent returns and make an analysis of the election?

A It is a conventional precinct profile analysis.

Q How accurate have you been, for instance, in

1 Direct Examination - Murray

2 the last major election?

3 A Well, we were very accurate there. We were
4 able to project the exact percentage.

5 Q Based upon a return of how many precincts?

6 A 16.

7 Q How many precincts are there in Harris County?

8 A In the City of Houston, there are 245.

9 Q Now, have you also been able to discern with
10 respect to general elections, special elections, primary
11 and how they distinguish from one another?

12 A The thing that has most impressed me about
13 looking at the Black-White voting patterns, has been that
14 there are, in fact, two patterns that need to be distinguished.
15 Especially with respect to the white electoral behavior when
16 a Black candidate is on the ballot. One pattern emerges when
17 you have City and School Board elections and a second and
18 distinct patterns emerges when you have State Legislative
19 elections.

20 Q Could you tell us what these two patterns are?

21 A Well, if we are concerned with the variable
22 of white support for a Black candidate -- a vote that a Black
23 candidate can get in Black areas, in City and School Board
24 elections Black candidates get their strongest share of the
25 vote in the affluent middle-class areas.

1 Direct Examination - Murray

2 Q Which would be characterized on this chart
3 as --

4 A -- well, generally Southwest Houston, West
5 Houston, the outer fringes now of the county that are being
6 developed.

7 Q All right.

8 A For example, when Representative Graves ran
9 for Mayor in 1969, his strongest showing was in Southwest
10 Houston.

11 MR. CUNNEY: Your Honor, I don't want to be
12 pretentious, but we had rather he be limited to
13 responding to the questions that are asked.

14 JUDGE GOLDBERG: This is before the Court and
15 we will allow some latitude, but let's try to keep
16 our questions as harmonious as possible to make the
17 case, -- what you really have to bring out to make
18 the case.

19
20 By Mr. Melkin:

21 Q All right. Now, that was the pattern of
22 white Harris County voters for Black candidates in City and
23 School Board Elections?

24 A Yes.

25 Q Okay. Now, what about the pattern with

1 Direct Examination - Murray

2 respect to white support for Black candidates in State
3 legislative elections?

4 A Well, you generally find the reverse, that in
5 the more affluent or middle-class areas, support for Black
6 candidates is lowest and Black candidates do best in heavily
7 labor, than say white areas. Areas wherein City and School
8 elections get very, very few votes for Black candidates. Now,
9 I think this is a private finding which you have here two sets
10 of issues that tend to come out in these type of races and it
11 is not anything that unique to Houston. City and School Board
12 elections bring out issues like housing, integration of the
13 schools, and so forth that elicits different kinds of reasons
14 than you get in legislative elections, where economic --
15 particularly in this State and particularly in Harris County
16 seems to be the most important predictor in white electoral
17 behavior.

18 Q Are you saying voting breaks down according
19 to economic lines with respect to Senate and House elections?

20 A Very much so. Especially in the white
21 community. The Black community tends to generate votes
22 uniformly and of course, there are distinctions within that
23 community by economics. But wealthy white areas and poor
24 black areas tend to vote alike, but economics is a terribly
25 important determinate.

Direct Examination - Murray

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Q Now, one other particular point I would like to make with regard to the distinction is the matter of the slate versus the one to one vote. Could you tell the Court the voting patterns in Harris County where a Black is part of a slate, as opposed to his chances where he runs in a one to one?

A Well, when a Black is running in a multi-member situation where a slate can be formulated that has a number of candidates and a Black can run as one of a team, his vote goes up considerably and in this area, you usually have a coalitional type of politics wherein seemingly the coalition voters are willing to vote for a Black if he is part of a team. The Blacks have generally been successfully in Houston in such slates. And in one to one situations, the voting takes on much stronger racial overtones. The whites there tend to vote for the white and Blacks very strongly tend to vote for the Blacks.

Q All right. And it is true, is it not, that in Harris County, persons running for State Senate positions run in single member districts?

A Yes. Of course, all State Senators in this State do.

Q Excuse me one second. Dr. Murray, as part of the uncontested facts in this case, the parties have agreed

Direct Examination - Murray

that certain named persons who are Blacks have been elected to public office in Harris County and the persons that we have agreed upon are Barbara Jordan, Senator, District 11, 1966-68 by special election and then 1968 to 1972, unopposed. We also agreed with respect to Curtis Graves, Representative of District 23, 1966-68 term, 1969-1970 term and elected unopposed in 1970-72 term. Leon Everett, Houston Independent School District, Board of Trustees, 1969-1972 term, City wide election. Herman Barnett, again the Houston Independent School District, '71-74 term, City wide election and Judson Robinson, City Council, District B, 1972-73 term, City wide election. We have also agreed with respect to two Chicanos, Leonardo J. Castillo, City Comptroller in the 1971-72 terms, City wide election, and David Lopez, Houston Independent School District, Board of Trustees, 1972-1975 term. Now, I would ask that inasmuch as these are undisputed facts, if you could, if you would make an analysis of these particular elections where Black -- where minority group members have been elected and see if it fits within your analysis of state and the other distinctions that you have made.

A Representative Graves was elected in 1966 and has been reelected as a member of the six man state representing a House Legislative District in Northeast Harris

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2 County, a District that is far more than one-sixth Black,
3 but does not have a white majority. The slate included a
4 Mexican-American, and four whites who lived in various parts
5 of the district. Herman Barnett and David Lopez were recently
6 elected as members of a Citizens for Good Schools slate, which
7 is a semi-political party which has merged for school
8 elections in Houston, along with a white -- I guess liberal
9 doctor, Everett, who was elected two years ago on the CGS
10 slate, running with three whites.

11 Q Were there in those particular school board
12 races other Blacks and Mexican-Americans who ran who were
13 not part of the slate?

14 A Many candidates, particularly in the last
15 election.

16 Q All of whom were unsuccessful?

17 A Yes. They did very poorly.

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Q Now, with respect to Judson Robinson, City Council, District 5, were there some particular circumstances about that race?

A Well, of course, he ran two years ago, was defeated in the city-wide election. The city is a lot blacker than the county in terms of its population, and it is a lot browner than the county. It is a more favorable electorate, and Robinson was a well-known candidate, ran against an aging incumbent and defeated him with a substantial share of his vote coming from affluent whites in Southwest Houston.

Q With regard to Barbara Jordan, we will reserve on that and come back.

Now, I want to move into, if I can, the old Senate District 11 in Harris County, which you know to be Barbara Jordan's old district.

MR. HELLMAN: Your Honor, Plaintiffs'

Exhibit 16 is listed on the Pretrial Order.

There are reservations by the Defendant with respect to his right to contest the accuracy of the way the lines are drawn, as well as the accuracy of particular cross-hatching which represents over 50 percent black census tracts.

1 MR. CURRY: May it please the Court, 31

2 our position on that is that Counsel repre-
3 sent to us it is accurate. The census
4 reports for the area will be part of the
5 record, and rather than go to the trouble
6 of confirming it, we just simply reserve
7 the right, so ultimately if there is any
8 inaccuracy, it will be shown in the record.

9 JUDGE GOLDBERG: Appreciate that.

10 Q Dr. Murray, it is correct, is it not, that
11 this particular senate district represented by the number
12 eleven was, in fact, is the only senate district in Harris
13 County that has ever elected a black person to the Senate?

14 A That's correct.

15 JUDGE JUSTICE: Hold it up for him, Mr.

16 Carl.

17
18 (REPORTER'S NOTE: The Law Clerk
19 complies.)
20

21 Q Now, if we could, I would like to begin with
22 respect to these old district lines. By your analysis of
23 the community of interest, the homogeneity characteristics
24 of both Senate District 11 and the other districts.

25 A Well, there is considerable variation in some

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2 of the districts. Eleven, I think, is one of the more
3 homogeneous ones. If you look at something like median
4 income in that district, there is not enormous variation
5 by census tract.

6 JUDGE JUSTICE: Could you speak a little
7 louder, please?

8 A District 11 contains a substantial black
9 population, somewhat less than 40 percent, but a large
10 black population. It contains a substantial Mexican-
11 American population, probably around 12 percent or so, and
12 the remainder being white. That part of the county in
13 District 11 where the Anglos live is a generally blue-collar
14 labor area and rural fairly low income area.

15 So, in economic terms I think there is a
16 pretty high degree of community interest across racial or
17 ethnic lines in District 11.

18 Q With regard to the location of the Chicano
19 community, could you just tell me when to stop with my
20 hand (indicating)?

21 A Well, it would be down at the bottom fringe
22 basically and a little bit above that, right there (indi-
23 cating).

24 Q And are the blacks again within this parti-
25 cular district--

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Well, of course, the cross-hatching, as I have represented to Counsel, represents over 50 percent black census tracts.

What about these white areas also included in District 11? Do those also contain substantial black minorities?

A No, not in most cases. There are some blacks in every tract in the central city area, but not in great numbers.

The white of the unshaded crossed tracts of the central city are heavily Mexican-American, and the outlying tracts generally have very few blacks or very few Mexican-Americans in them. They don't have that many people either. At least, they didn't in 1960. It was a relatively lightly populated area.

Q Now, these figures are based upon 1970 census tract figures. Is that correct?

A Well---

Q Well, it is. The cross-hatching is based upon 1970 census figures.

Now, can you go back to the period of time when this particular district was drawn? Can you give us the year then?

A I would say '63.

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Q Had could you tell us if upon your analysis of the demography of the area based on the 1960 census tract figures that particular district was a guaranteed black district?

A No.

MR. CUNY: Your Honor, we are going to object to that primarily on the basis that the question calls for his testimony based on 1960 census figures, which we say would be necessarily inaccurate and therefore would be a conclusion on his part, and it is too remote. We object to that.

MR. HELKIN: Your Honor, if I might be heard on that, there is no census information that I am aware of that existed when these lines were drawn, other than 1960 census tract information. This is what was available to the people who drew the map.

JUDGE GOLDBERG: This is before the Court, and we will let it in, and we will consider its relevancy and competency.

JUDGE JUSTICE: You may proceed.

MR. HELKIN: All right.

A No, I don't think it was a guaranteed

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2 district that would elect a black. I think there was a
3 good chance that it would elect a black. That is all one
4 can say. The district did not have a black majority.

5 Q And, in fact, Barbara Jordan, who wins this
6 particular district had run in Harris County before, had
7 she not?

8 A Yes, she had run county-wide in 1962 and
9 1964 on a liberal slate for the Legislature, was defeated
10 both times, running moderately close races.

11 Q Now, with regard to other than -- well, you
12 said economic, and when you say economic, I presume you are
13 including both median income and housing patterns. Is
14 that correct?

15 A Right.

16 Q Now, is there anything that could be added
17 by an analysis of precinct returns for the past ten years
18 that you have analysed -- the past six years?

19 A With respect to that district?

20 Q Yes, as to its homogeneity.

21 A Well, precincts very generally vote together.
22 In that senate district, for example, in 1968 Don Yarborough
23 carried every precinct, white, black, brown. Ralph
24 Yarborough carried all but the Crosby precinct and Highlands
25 -- Ralph carried all but eight, I think, of the outlying

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2 areas, but it is generally an area where in legislative
3 races, blacks, whites, browns vote together. Same, of course
4 introduces a new variable.

5 JUDGE JUSTICE: So that the record may
6 reflect the significance of these posts of
7 the two Yarrowboroughs, would you state what
8 their political coloration was?

9 THE WITNESS: Liberal Democrats. That
10 is a district that can very fairly be char-
11 acterized as a strongly liberal Democratic
12 district.

13 Q And is that a general pattern of black
14 voting in Harris County?

15 A Yes, blacks in Harris County in recent years
16 have almost invariably voted for Liberal Democrats.

17 Q Thank you.
18 Now, with respect to Plaintiffs' Exhibit
19 No. 11 in evidence, we now have before us the new lines
20 that have been drawn as compared to---.

21 JUDGE JUSTICE: Hold this up for him,
22 Mr. Shelton.

23 (REPORTER'S NOTE: Mr. Shelton
24 complies.)

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Q As compared to the old senate lines, and I would like to get your ideas on a comparison of these two particular formations with regard to the various types of things that go into drawing districts in any particular governmental entity---

MR. HELKIN: Now, I am not exactly sure how to deal with this, Your Honor. We have taken a deposition of a Mr. Bob Spellings, and I understand it is now available this morning, although I haven't seen it. Mr. Spellings, who testified that he drew this map, which constitutes the present Board Districts, testified as to the various factors that he utilized, and I can represent to the Court based upon my notes, those are the factors that he used, and I would like to question Dr. Murray about whether or not this map is a working example of utilization of those particular principles.

JUDGE JUSTICE: You say this is in his deposition?

MR. HELKIN: Yes.

JUDGE JUSTICE: You represent to the Court that the factors that you are about to

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2 ask about are included in his deposition?

3 MR. MURKIN: Yes, sir, Your Honor.

4 JUDGE JUSTICE: All right, you may proceed.

5 JUDGE GOLDBERG: And the other side, of
6 course, will have the opportunity to verify
7 and challenge--.

8 MR. CUNY: Thank you, Your Honor, we
9 also haven't had an opportunity to read the
10 deposition.

11 JUDGE GOLDBERG: Certainly, I understand.

12
13 MR. MURKIN:

14 Q Now, Mr. Spellings, Dr. Murray, testified
15 that he used what he termed the core concept to draw the
16 present senatorial districts and when he explained the
17 core concept, he stated that he would go to the center of
18 urban population and then he would move outward from that
19 adding census tracts to make up appropriate numbers.

20 He did not remember in what direction he
21 had gone when he drew Harris County from the center of
22 the city, and he did not remember when shown a reduced
23 version of this map, as to where the center of the city is,
24 and I wonder if you might point out to the Court as best you
25 can, first of all, where the center of Harris County is, and

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2 I might mark that on the exhibit.

3 JUDGE WOOD: I think, Counsel, for the
4 record you better identify the exhibit you
5 are talking about.

6 MR. MELKIN: Beg your pardon, Plaintiffs'
7 Exhibit 11.

8 A Well, the population center of the City of
9 Houston is a little south of downtown and slightly west
10 so it is near the confluence of Districts 6, 15 and 11, so
11 just trace the -- it is a little south of there (indicating)
12 right about there.

13
14 (REPORTER'S NOTE: Counsel indicates
15 on exhibit.)

16
17 A Probably a little farther west.

18 Q O. K. If the record might reflect, I have
19 placed a black X where Dr. Murray has indicated the center
20 of Harris County urban population is approximately located.

21 A It is about an inch from there.

22 JUDGE GOLDRENS: You say that is the
23 center of urban population in Harris County?

24 THE WITNESS: It is a little west and
25 south of there.

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EXHIBIT - EXHIBIT 100 40

Q Through here (indicating)?

A That would be more closely accurate.

The county's urban population, of course, is concentrated in the south central part of the county.

Q Now, if Mr. Spellings were to have used the core concept, does this particular map indicate that that occurred?

A Well, I have only an opinion. My opinion is in terms of the four -- if you look at all four districts, yes. I mean they cut in and out the core up and you build out from the core for the four districts. Clearly, there is no -- seems to me -- there is no indication that there is a core district created, such as we saw in Congressional districting.

Q The fact of the matter is that when Mr. Spellings -- and again I represent to the Court -- testified the use of the core concept was based upon a theory that the core had a greater community of interest than outlying areas, would it not have been appropriate to have included all of the core in one senatorial district?

MR. CUNNEY: Your Honor, we will object to whatever appropriateness calls for. We can't see that that specifically is in issue in this case.

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MR. NELKIN: Your Honor, we are attempting to determine the reasons behind the map which, in fact, destroys the core of Harris County when the person who drew the map testifies that the thing he was trying to do was to preserve the core.

JUDGE GOLDBERG: This involves some legal questions and legal opinions, which I take it the Court would have to reserve and settle ultimately, but anything that he wants to say with respect to what constitutes the core or how a core might be used, but any legal conclusion, I think perhaps, that will be left to the Court.

MR. NELKIN: I appreciate that, Your Honor.

BY MR. NELKIN:

Q With that particular framework, could you comment on the destruction of the core by the method in which this map has been drawn?

A Well, if you mean by the core the inner city, and we mean by that what the Census Bureau takes as the inner city of Houston, which is the 56 old census tracts

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2 that existed in 1940. It is an area that contains about
3 411,000 people, and they are divided between three senate
4 districts under this plan, in contrast to the Congress
5 plan where they are almost entirely included within one
6 congressional district.

7 Q Again, the Congress plan for Harris County?

8 A For Harris County.

9 Q Now, I would like to have you comment, if
10 you could, on the -- of course, community of interests may
11 be a legal term, but the similarity of economics, the
12 similarity of voting patterns of the persons who live in
13 what the new senatorial districts are. Let's take, for
14 instance, District 15 now.

15 District 15, as we see, moves across and
16 into the core. Does it also include a very affluent area?

17 A Fifteen is the most heterogeneous of the
18 senate districts. It includes the census tracts, like
19 River Oaks census tract, that has the highest median home
20 value. It includes also some of the poorest census tracts
21 by whatever measure is used, deteriorated housing, dilapi-
22 dated housing, and it includes a number of white middle
23 class areas. It includes a number of aging white areas,
24 generally low income. It is a polyglot district. I would
25 not characterize it as having any community of interest as

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2 that term is normally used in socio-economic, racial or
3 ethnic---.

4 (No omission here.)

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2 Questions by Mr. Malkin:

3 Q Isn't it true, Dr. Murray, that the western
4 part of District 15 includes a suburb which is one of the
5 wealthiest in the nation and the eastern part of the county
6 contains what has been classified by the Bureau of Census
7 as the poverty area?

8 A Yes.

9 Q Now, with respect to voting patterns, is there
10 a similarity in voting patterns on state legislative races:
11 the people on the west and the people on the east?

12 A The one side of the district will vote in
13 complete opposition to the other side in almost every
14 election that can be analyzed.

15 Q All right. And, when you say that you are
16 saying that the western part would vote in a very conservative
17 fashion and the eastern part would vote in a liberal
18 Democrat.

19 A If the race could be defined as liberal versus
20 Democrat-- conservative. If that becomes the, say, the
21 initiative, the western is conservative and the east is
22 liberal.

23 Q All right. Now, with respect to the old senate
24 districts, where--

25 JUDGE GOLDBERG: What is this exhibit number?

1 MR. NELKIN: Number 16.

2 MR. NELKIN CONTINUES:

3 Q Where do we find the River Oaks area?

4 A It is included in Senate District 15 which,
5 while it has what I think is a gerrymander, it has a total
6 that reaches over and reaches five Black precincts farther
7 down, right there. It is a district that is overwhelmingly
8 White, affluent, conservative, votes heavily Republican in
9 general elections, it is strongly conservative in Democratic
10 primaries-- much more so than the new district 15 which
11 includes substantially more liberal strength-- although I
12 think realistically a minority.

13 Q That was the next question I wanted to ask you;
14 with relation to these two diverse groups within here, how
15 would you characterize their strength with respect--

16 JUDGE JUSTICE: For the record, which exhibit
17 are you--

18 MR. NELKIN: I beg your pardon, this is 11, and
19 I am referring to Senate District 15 within-- the
20 population divergence within that particular
21 district.

22 MR. NELKIN CONTINUES:

23 Q How would you characterize the relative voting
24 strength based upon registration and all the other factors
25 you have considered?

1 A I think it is a district that we could say
2 tends to be conservative, a fairly strong tendency to be
3 conservative. There would be an outside chance, if the
4 personality issues were right, that, say, that a liberal
5 could win in the Democratic primary there-- an outside chance
6 of the primary there-- a Democrat in the general election.
7 But, I think it is a district that should go conservative in
8 the Democratic primary, and probably a conservative Democrat
9 would defeat a Republican in the November election.

10 Q Now, with regard to Senate District 11 on
11 Plaintiffs' Exhibit 11, could you characterize the similarity
12 of the people, economically, and voting preferences?

13 A Well, it is closer than District 15, but there
14 is still a good deal of disparity. The 11 comes around and
15 takes in the biggest slice of the inner city and it has the
16 heaviest Black population, about thirty-seven per cent. But,
17 the part of the district on the east side reaches down into
18 Pasadena and beyond all the way to the TeNessa area, entirely
19 White, tending to be white collar, some blue collar working
20 class, but considerably middle class components in that
21 area and also has a substantial Mexican-American population.
22 So, in comparison to the old District 11, I would say much
23 less community of interest.

24 Q And, that would be economics. What about
25 voting patterns?

1 A Well, again, in the old District 11 you find
2 in most elections the precinct voting together. In this one
3 you will find a substantial minority that will deviate.

4 Q All right. Now, with regard to Senate District
5 13 as it is principally constituted, and we are looking at
6 it on Plaintiffs' Exhibit 11, we have a district which
7 stretches from a southeast portion of Harris County all the
8 way around the city or the county to the southwest, can you
9 describe the homogenetics of that particular district?

10 A Well, it is racially fairly homogeneous. It
11 is a very heavy White district, but in terms of economics,
12 which I again think is terribly relevant to voting behavior
13 in state elections, it is very homogenetic. The east side
14 of the district is pretty heavily working class and tends to
15 be liberal democratic. The west side is strongly conserva-
16 tive and tends to be Republican in the general elections.
17 And, I think you will find that one side of 13 is going to
18 vote in opposition to the other side-- in most elections.

19 Q All right. Now, with regard to Senate District
20 6 as it is presently constituted in Exhibit-- on Plaintiffs'
21 Exhibit 11-- can you describe again the concept of the
22 portion of the core as it relates to rest of the district?

23 A Well, you could pattern 6 as the pattern of
24 the other four districts that touch the core. You have a
25 minority of the district that is made up of the inner city

1 core, which is generally the poorer segments of the popu-
2 lation, and it stretches out to include more affluent
3 suburban census tracts. 4 is a more homogeneous district
4 than most, however, I would say the pattern is there; it is
5 just less pronounced, in my opinion.

6 Q Could you tell us, sir, the percentage of
7 black persons who live in Harris County?

8 A About twenty per cent.

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2 Q All right.

3 JUDGE GOLDBERG: 20 percent.

4 A 20 percent.

5 JUDGE GOLDBERG: Go through each of the
6 Districts there and tell us what the percentage of
7 Blacks is in each District. Do you have there --

8 MR. WELKINS: Your Honor, we have that.

9 There has been an objection lodged to that portion
10 of that chart, and we might as well deal with that.
11 Professor Murray, in response to what I thought was
12 an appropriate offer of proof, has prepared what he
13 considers to be the perfect plan or an appropriate
14 plan for Harris County, taking into consideration
15 the types of things that Mr. Spallings, for one,
16 said were appropriate to consider. We have got
17 here a comparison of Black percentages by Board
18 District and proposed district. The Defendants
19 have objected to the question of the proposed
20 district on the basis of relevancy. And, since
21 we are -- Well, I am really at a loss how to move
22 here, because this trial is going to end and others
23 are going to start, and I have Professor Murray
24 here and I would like him to explain the plan he
25 drew.

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2 JUDGE GOLDBERG: Continue subject being
3 instructed --

4 MR. MELKIN: Thank you, Your Honor. Your
5 Honor, we are now looking at Plaintiffs' Exhibit

6 A.

7 Mr. Melkin continues:

8
9 Q: Dr. Murray, I would like you to read, if you
10 could, or just tell us the percentage of Blacks in these
11 various Senate districts.

12 A Well, in the little tiny portion of the
13 southeast corner, that goes into Galveston County, and other
14 counties with almost no Blacks.

15 JUDGE WOOD: What precinct number is that?

16 A That would be 17.

17 JUDGE WOOD: All right.

18 A And only 70 Blacks out of 25,000 people.

19 JUDGE JUSTICE: I didn't hear that answer.
20 What was the question and the answer?

21 MR. MELKIN: The question is Judge Goldberg's
22 of Black percentages in the Districts in Harris
23 County as they are drawn.

24 A District 13, I think, is what, four percent --
25 I can't see the chart, but, District 11 is 37

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percent, District 15 is 19 percent Black, District 7 is 18 percent, District 6 is 23. So, basically, the Black community is generally divided between four Senate Districts and ranging between 18 and 37 percent Black.

Q All right. Now, if we could go back to Plaintiff's Exhibit 16, which would be the 1965 lines. I want now to have you, sir, if we can, an analysis of the relative voting strength of Blacks as compared between this 1965 Plan and the 1971 Plan. Has there been a dilution of Black voting strength?

A I think so.

Q All right. Now, what about percentages; isn't it a fact that the percentages have not changed that much?

A They have not, because, I think, that in the 1965 Plan, they divided the Black community just as the 1970 Plan did. If you will look at the '65 Plan, it cut into the central city and simply divided and disbursed. But, there is one district, District 11, that had a substantial Black population that was included with a white-blue collar labor area and elected a Black Senator. But, I think the Black population was divided in the 1965 plan; there is no evidence that that plan was intended to elect a Black.

MR. CUREY: Your Honor, we object to that

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2 comment. It was not appropriate and we will ask that it be
3 stricken.

4 JUDGE GOLDENBERG: This is before the Court,
5 but it is strictly your opinion and it involves a
6 great deal of opinion and a great many factors,
7 which I am sure the witness would be the first to
8 say, subject to qualification.

9 MR. MALKIN CONTINUES:

10 Q So, that the dilution of Black voting strength
11 is not so much a numerical or a percentage dilution as it is
12 a destruction of the homogenetics that existed under the
13 1965 act?

14 MR. CUNY: Your Honor, he is an expert
15 witness and some latitude should be given, but I
16 think he is testifying and leading the witness,
17 rather than asking question and I object to his
18 leading the witness.

19 JUDGE GOLDENBERG: Well, he is an expert. He
20 is being led, but perhaps it will save time if we
21 are a little forgiving in this, unless you insist
22 on your objection. I think it would save a lot of
23 time if he could get to --

24 MR. CUNY: Your Honor, we have no intantio

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2 of insisting that at all times he not lead the
3 witness, but some of the questions have been
4 extremely --

5 JUDGE GOLDBERG: Restate the question,
6 counsel.

7 MR. MELKIN CONTINUES:

8
9 Q Dr. Murray; you have testified that there
10 has been a dilution of Black voting strength by the drawing
11 of these lines, which are exhibited -- or Plaintiffs' Exhibit
12 11. You have also testified that there is a substantial
13 change in percentages of Blacks in the most populous Black
14 District. My question is, what is the result -- what is your
15 conclusion of those two items, the product of those two items?

16 A I don't think there will be a Black Senator
17 elected from Harris County in 1972.

18 Q And, again, at the risk of leading you; isn't
19 it dilution not so much a question of numbers as it is a
20 destruction of the homogenetic --

21 JUDGE WOOD: Why don't you ask him what
22 causes that? Why do you have to lead him. Ask
23 him what brings this about, this result.

24 MR. MELKIN: Yes, sir.

25 A Two things. While the Black percentage in

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2 District 11, say, is roughly the same as it was before, the
3 whites that have been included registered more heavily,
4 voted more heavily -- or at least, I think, share fewer
5 interests with the Blacks that are in the new district 11,
6 perhaps the most important practical political standpoint,
7 District 11 created in 1965, was a new Senate district with
8 no incumbent Senator. District 11, it turns out, while the
9 district retains a member that had a Black Senator, includes
10 an incumbent white Senator; if he has an indication of running
11 for reelection, he has a strong political basis included
12 within the district. And, that in politics, as everyone knows,
13 is the ball of wax in many cases. You have a sitting white
14 incumbent in the new District 11. No condition existed
15 similar to that in 1965 when the only incumbent white Senator
16 was in a completely different district.

17 Q Now, other matters that Mr. Spelling testified
18 to with regard to principles that he utilized included a
19 desire to have compact districts. Would you characterize
20 the Senate District of Harris County as compact?

21 A Definitely not.

22
23 (No omission here)
24
25

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2 Q And could you explain to the Court the basis
3 for your conclusions?

4 A Well, one, I think, is just face validity,
5 the scanning of the map, the districts do not, I think, to
6 almost any observer, conjure up the idea of compactness.
7 They are relatively tortured, twisted, turning, they are not
8 circles, they are not squares, they are not rectangles, and I
9 think those are the shapes we normally associate with compact-
10 ness.

11 Q All right. Now, sir, based upon persons who
12 have -- well, do you know the persons who have announced for
13 Senate races with respect to the various districts under the
14 plan which is law and which is shown on Plaintiffs' Exhibit
15 11?

16 A Approximately 20 people have publicly
17 announced for the State Senate in Harris County.

18 Q All right. And of those, would there be a
19 Mr. Lemon and a Mr. Ogg, who have announced?

20 A Yes. They have announced respectively in
21 Districts 7 and 5.

22 Q All right. And how would you characterize,
23 based upon your knowledge of the local scene, how would you
24 characterize their politics?

25 A They are conservative Democrats, members of

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2 the team that has dominated the House of Representatives in
3 recent years.

4 Q All right. And would you say that based upon
5 these tortured lines that you have testified to, the lack
6 of compactness, the lack of community of interest, and the
7 indication that for instance, 15 does include a substantial
8 portion of the corps, that these lines were drawn to assure
9 the election of conservative Democrats?

10 A I think that would be the effect; the intent,
11 of course, I cannot testify to, but I think the -- if one
12 had to take a hundred plans that would be constructed randomly
13 and this might be one of them, I think this would be one of
14 the two or three that would be most favorable to the interest
15 of Mr. Ogg and Mr. Lamon.

16 JUDGE GOLDBERG: With your proposed plan,
17 would it, in your opinion, assure the election of
18 the Black Senator from Harris County?

19 A No, it would not assure the election in the
20 sense that it would contain the core district, which would
21 be about 43 percent Black and 15 percent Mexican-American
22 and there have been races where these ethnic minorities have
23 not voted together.

24 JUDGE GOLDBERG: Are you asserting in that
25 conclusion, as you were in the conclusion that the plan as

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2 presently drawn would insure the election of the
3 Conservative?

4 A I am sure that the proposed plan would give
5 a Black a good chance of winning. I am sure that the existing
6 Board plan that they have come forth with is very, very
7 favorable to the election of Mr. Lee and Mr. Ogg.

8 Q And with respect to the chances of the Black
9 ever being elected under the Board's plan, what would be your
10 analysis?

11 A Very, very limited. Very small chance.

12 MR. MELKIN: Your Honor, Plaintiff's Exhibit
13 10 is Dr. Murray's proposed plan for Harris County,
14 which, of course, the Defendants' -- which I guess
15 is subject to being stricken -- I would like to
16 leave this up, if I could.

17 Q And Dr. Murray, again, dealing with the
18 issues of compactness, community of interest, and a desire
19 not to dilute racial voting strength, which I might also
20 represent to the Court Mr. Spellings indicated was an instruc-
21 tion he was under, could you comment with regard to the plan
22 that you have devised?

23 A Well, since I was explicitly aiming to
24 improve the community interest of the district and not to
25 dilute the racial strength, I think that object was achieved.

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2 The District 13, which is on the left, is almost an entirely
3 white district and generally a middle-class district. Almost
4 all of the precincts within that district almost always vote
5 together. I think District 11 on the other side of the
6 County encompassed both sides of the Houston Ship Channel.
7 It is largely industrialized and largely a white area, but
8 many parts of it are heavily blue collar. It does contain
9 some variations in social economic importance, but I think
10 it is more of a homogeneous district than any proposed under
11 the Board Plan. I think the core district, which is 15 on
12 the proposed map, is a district with high community of
13 interest. It is almost 60 percent composed of the ethnic
14 minorities; the two important ethnic minorities in Houston,
15 and the whites who live in that area, many of whom are --
16 many of the whites who are in that area are also poor, live
17 in poor housing, deteriorated and dilapidated housing. So
18 Districts 6 and 7 have lower community of interests. I think
19 this, to some extent, could not be avoided. 6 is -- the
20 community of interest in District 6 under the proposed Plan
21 is at least as good, if not better, than the Board Plan and
22 District 7 is probably about the same. So I think there is
23 a substantial improvement in those districts; one perhaps
24 a slight improvement, and one stays perhaps about the same.

25 Q All right.

1 Direct Examination - Murray

2 JUDGE GOLDBERG: All right, improvement with
3 respect to what?

4 Aq Not deluding the ethnic minority strength
5 preserving a kind of -- a central core, preserving the
6 community of interest as defined by the socioeconomic terms.
7 Trying to put people who vote together in the same district
8 and people who seem to share economic interest in the same
9 district and the people who share ethnic characteristics.
10 For example, the Board's Plan devised the Black community
11 into a poor district, I think giving their distributions of
12 the Black community in Harris County -- it would be very
13 difficult unless you did, and especially tortured district
14 to get them all into one. But in our plan, they are disbursed
15 into three districts and I think have a better chance of
16 having a political significant impact.

17 JUDGE GOLDBERG: In your proposed plan,
18 because of ethnicity, what did you consider?

19 A Voting behavior.

20 JUDGE GOLDBERG: With respect to what issue?

21 A Generally the races which identified with
22 liberals, versus identified conservatives; Benson versus
23 Yarborough in the last Senatorial election, the 1968
24 Presidential election with Humphrey, Nixon and Wallace. For
25 example, District 6 under this Plan would encompass the

1 **Direct Examination - Murray**

2 parts of Harris County that drew the strongest Wallace
3 support.

4 (No omission here)

1 Direct Examination - Murray

2 JUDGE GOLDBERG: You considered things other
3 than pure ethnicity?

4 A Yes. That's right. Although that is probably--
5 or I would say was the major factor. Districts in Harris
6 County based purely on ethnicity would draw some unusually
7 shaped districts.

8 JUDGE GOLDBERG: Under your theory, is there
9 anything inherently wrong with that?

10 A I think compactness and community of interest
11 are also values that have an important place.

12 JUDGE GOLDBERG: More important than ethnicity?

13 A Well, just contiguity would be destroyed,
14 and I don't think that could be permitted because the Black
15 community, for example-- there are still pockets which are
16 White separated from others. They cannot possibly be reached
17 except by drawing corridors and creating obvious gerrymanders
18 to include them into one district.

19 JUDGE GOLDBERG: Now you talk about gerrymander
20 now a gerrymander, I think under your proposed plan, would be
21 permissible to include ethnicity but would be disapproved
22 when it is directly thought otherwise?

23 A Well, of course it is my opinion, which is not
24 very important--

25 JUDGE GOLDBERG: --Well, you have a proposed

1 plan here and I want to find out the basis upon
2 which you propose the plan. I want to know the
3 components that went into it. You have talked
4 about--

5 A --The basic components, to begin with, was to
6 draw a core district.

7 JUDGE GOLDBERG: A core district?

8 A Right.

9 JUDGE GOLDBERG: A core district, to you, would
10 mean more than ethnicity?

11 A It would be a district that would be primarily
12 defined by ethnicity and secondarily by economics and
13 geography.

14 JUDGE GOLDBERG: But in order to achieve the
15 core result, you used what has come to be a bad
16 word-- you would think that a gerrymander would be
17 legally and constitutionally permissible, although
18 that is a legal question-- you have proposed a plan
19 here and I want to know if these other factors
20 entered into it?

21 A Factors such as?

22 JUDGE GOLDBERG: There is a gerrymander here
23 in order to-- in order that the core district have
24 a representative. Is that correct?

25 A Yes. In that the district includes only the

1 core but the ethnicity of the representative is not
2 guaranteed under the core district. It could be a White
3 person, but it would certainly be a person who lived within
4 the central city area. Of the twenty announced candidates,
5 not a single one of them lives within the central city of
6 Houston. In all doubt, they will file, but--

7 Questions by Mr. Nelkin:

8 Q Dr. Murray, with respect to tortured lines,
9 you and Judge Goldberg have been talking about tortured lines
10 to insure some homogeneous characteristics with regard to
11 ethnicity. Would you characterize the four districts as
12 they currently exist and are displayed on Plaintiffs'
13 Exhibit 11 as tortured lines?

14 A I so testified.

15 JUDGE GOLDBERG: My problem, if I may interrupt
16 here, if this witness proposes a plan in order to
17 give the core group representation and in order to
18 do that he has to torture the lines, what is wrong
19 with it?

20 A Well, no torture is necessary here.

21 JUDGE GOLDBERG: Suppose one was?

22 A Well, if that was my intention, I would torture
23 them, I suppose.

24 Questions by Mr. Nelkin:

25 Q Dr. Murray, you have not tortured the lines in

1 Harris County?

2 JUDGE GOLDBERG: What do we mean by "torture"?

3 Let's get down to some definitions.

4 Q Dr. Murray.

5 A Well, I think districts that are, to use
6 common language, odd shaped, peculiar, that stretch and bend
7 and twist, pick up and pull together areas that are geo-
8 graphically scattered.

9 JUDGE GOLDBERG: Do you think there is a
10 terrible distortion between these two on your
11 definition of "tortured" or "distortion"?

12 JUDGE WOOD: Exhibit 16 and Number 10? Is
13 that right?

14 A I think so.

15 JUDGE GOLDBERG: You think there is a terrible
16 distortion-- shocking distortion?

17 A Not shocking. Not perhaps terrible, but I
18 think a strong distortion.

19 JUDGE GOLDBERG: You use whatever words you
20 want in making comparisons with respect to dis-
21 tortion.

22 A Strong.

Questions by Mr. Melkin:

Q But the distortion with regard to Plaintiffs' Exhibit 11 is, for the purpose of putting in known diverse groups? Is that correct? I mean diverse groups.

A Yes.

Q And as you testified, to dilute the voting strength of the Blacks who exist in the core.

MR. CURRY: Excuse me, your Honor. I believe that the gentleman testified that he could not testify as to the intent of the design. He did testify it was to the effect.

Q All right. Then as to the effect, the tortured lines in Plaintiffs' 11 have the effect of diluting Black voting strength by destroying the core of the city?

A Yes.

Q All right. And with regard to these particular lines, first of all, is there a guarantee of a Black being elected?

A No.

Q All right. In fact, is there a majority Black percentage in District 15 as is shown on Plaintiffs' Exhibit 107

A No. It is perhaps now forty-five per cent Black.

1 Q All right. Now, so if there is any torturing,
2 however you are using the term, it would be to insure those
3 things which the State of Texas has indicated were desirable
4 in drawing a plan; namely, community of interest, compactness
5 contiguousness, as factors?

6 A Yes.

7 Q In fact, Dr. Murray, doesn't your plan solve
8 or answer all of the principles that the State of Texas has
9 indicated they desire-- well, not all of them-- the ones that
10 I have represented to you, would be desirable in drawing a
11 map.

12 MR. CURRY: Your Honor, we object to that as
13 calling for a conclusion. I believe he has
14 testified as to what he thinks it does in each area.

15 JUDGE GOLDBERG: I think he has, too. We will
16 receive it, but the things heretofore indicated
17 will be constantly on our minds.

18 Q Does it satisfy those principles?

19 A I think it does.

20 Q And does the plan, in your expert opinion that
21 was proposed by or in fact is now law, destroyed-- destroy
22 those principles?

23 A I do not think it fulfills the state objectives.

24 Q Now, one of the questions that was constantly
25 asked by the State's Attorney in depositions was, isn't it

1 just a matter of choice between putting a Black minority in--

2 JUDGE GOLDBERG: --I didn't hear the first part
3 of the question, Mr. Nelkin.

4 Q Yes, sir. The question that the State's
5 Attorney had asked of several persons as I recall in deposi-
6 tions, was, isn't it simply a matter of choice between having
7 a district which has a chance of electing a Black, such as
8 District 15, under the proposal as opposed to placing
9 substantial numbers, although a minority-- the size of the
10 majority as opposed to the minority, in each of the several
11 districts so that they might be able to temper the views
12 of candidates who were going to be supported by the majority?
13 I want to ask you specifically with regard to Harris County,
14 is that really a-- is that more a theoretical question than
15 a reality?
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A I think it is more a theoretical question. The political realities of Harris County are in legislative politics the county is very sharply divided along liberal-conservative lines. If the conservative is elected his political behavior is very predictable. I think irrespective of the composition of population within his district, whether 2 or 20 percent black. If a liberal is elected, I think his political behavior in the Legislature is predictable, irrespective of whether he has 5, 18 or 40 percent black.

I don't believe in the temper notion, tempering idea.

Q Now, with regard to your experience on the Harris County election scene, have you had occasion to become acquainted with the name Everett Collier?

A Yes.

Q Could you tell the Court who Mr. Collier is?

A He is Editor of the Houston Chronicle.

Q And based upon your experience, do you know whether or not he has ever engaged in either assisting or, in fact, drawing some type of governmental election units?

A Yes, he's made no secret of the fact that he's been interested in legislative and other sorts of districting in Harris County. The existing Commissioners

1 DIRECT EXAMINATION - Murray

2 Court plan in Harris County is commonly known as the
3 Everett Collier plan.

4 Q Was there a proposed district drawn by Mr.
5 Collier with regards to Congress?

6 A Oh, back in '65 he was very active in
7 Congress.

8 Q Could you describe for the Court the fea-
9 tures of that plan?

10 A Well, one proposal that was presented was
11 the hourglass---

12 MR. CUNY: Your Honor, we will object.
13 We don't see any relevancy of what proposal
14 Mr. Collier might have proposed in another
15 day and another time that is in issue in
16 this particular case.

17 MR. MELKIN: Your Honor, if I might be
18 heard on that, we have taken Mr. Collier's
19 deposition, and we are at this moment in
20 Houston taking another deposition which
21 relates to that deposition. We intend to
22 offer proof on the question of how the
23 Board Districts actually did come about,
24 and we would show the Court sometime in the
25 order of proof a plan which has striking

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2 similarities to the plan that was enacted in-
3 to law. We will also show the Court that
4 there is a relationship between Mr. Collier
5 and others in the way the particular plan
6 was formulated, and we further wish to show
7 the Court based on past history the types of
8 things that Mr. Collier has felt would be
9 palatable for black people in Harris County.

10 One of those includes a total destruc-
11 tion of the core with respect to Congress.

12 MR. CUNNY: May it please the Court,
13 first of all, Mr. Collier is, I gather, a
14 citizen of the State of Texas and entitled,
15 as anyone else, to express views.

16 Our position is that unless he was
17 directly involved in the plan involved here,
18 any testimony relating to congressional plans
19 or other plans is totally irrelevant in this
20 issue, and we object to it.

21 MR. WELKIN: I think we are going to
22 the question of motives. We framed our com-
23 plaint in the alternative, one is that there
24 was an intention to dilute black voting
25 strength, and secondly, the plan, even if

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it was an innocent motive, such as a racially innocent motive, such as political gerrymandering, nevertheless, still has the effect of diluting black voting strength, and for that reason we think it is appropriately immaterial.

(REPORTER'S NOTE: The Court here confer out of the hearing of the court reporter.)

JUDGE GOLDBERG: Counsel, I started this proceeding in the hope that we could keep it as short as possible. Now, if we are going to go back and talk about what happened in other plans and this and that, we are never going to get through here. Now, I want to give you as much latitude as is required in order to enable you to make what you think is your case---.

MR. MELKIN: There are two questions, Your Honor.

JUDGE GOLDBERG: ---but let's keep this within some bounds of reason. We could go back,

1 DIRECT EXAMINATION - Murray

2 I guess, to 1990, and we would never stop
3 this trial. We are talking about the
4 legislative plan, the senatorial plan for
5 Harris County.

6 MR. MELKIN: Yes, sir.

7 JUDGE GOLDBERG: Now, if individuals
8 who are involved in this that you think show
9 intention, let's keep it to that, but to go
10 back into Congress of years gone by may have
11 some slight relevance, but I don't know that
12 it is going to be worth all that to you, and
13 in order to be helpful, let's move it along.

14 MR. MELKIN: Yes, sir.

15 I would like to ask just the one ques-
16 tion.

17 JUDGE GOLDBERG: All right, go ahead.

18
19 BY MR. MELKIN:

20 Q Did Mr. Collier propose a congressional
21 plan which was not enacted that you are aware of?

22 A Yes.

23 Q And could you describe---

24 JUDGE GOLDBERG: Congressional plan
25 for what?

1 DIRECT EXAMINATION - Murray

2 MR. NELKIN: Congressional district
3 out of Harris County.

4 Q And could you describe for the Court the
5 features of that plan?

6 A It was simply to divide the black community
7 roughly in thirds by running districts across the county.

8 MR. CURRY: Your Honor, I believe
9 the Court really instructed the Counsel not
10 to go into the area. We renew our objection
11 and also state that he is testifying to a
12 matter that is totally hearsay.

13 MR. NELKIN: Your Honor, he's asked to
14 describe the plan as he knows it, and, of
15 course, the question of motive, we don't
16 have three people in the State who say, "We
17 agree with you. We designed this plan to
18 dilute black voting strength," and we do
19 have individuals who were involved in
20 drawing this plan, and some of the things
21 they have done in the past are very material.

22 JUDGE GOLDBERG: Well, subject to, again,
23 what I said repeatedly, we will take it in
24 subject to all the reservations that we have
25 made, but let's move along.

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2 MR. NELKIN: Yes, sir.

3
4 BY MR. NELKIN:

5 Q Now, was there an hourglass figure to that
6 particular plan?

7 A Yes.

8 Q And did it, in fact---

9 MR. NELKIN: May I lead the witness in
10 this particular area?

11 JUDGE GOLDBERG: If Mr. Curry and Mr.
12 Jaworski will permit it.

13 Q Did it not, in fact, Dr. Murray, take in
14 large areas of white at the north and south and then come
15 with a corridor effect through the black area, so that
16 those particular portions of black people would be deprived
17 of a chance at electing a representative?

18 A It was very good at diminishing any chance
19 that they would have of electing anyone.

20 JUDGE WOOD: This plan was never adopted,
21 was it?

22 THE WITNESS: It was not adopted by
23 the Legislature.

24 JUDGE GOLDBERG: There were other
25 plans suggested by other good citizens, other

1 DIRECT EXAMINATION - Murray

2 citizens of Harris County?

3 THE WITNESS: Doubtlessly, sir.

4 JUDGE WOOD: And they weren't adopted
5 either, were they?

6 THE WITNESS: One of them was.

7 MR. NELKIN: We have no further ques-
8 tions at this time.

9 JUDGE GOLDBERG: Ten minute recess.

10
11 (REPORTER'S NOTE: The Court then,
12 at 10:58 o'clock A.M., January 3,
13 1972, recessed until 11:08 o'clock,
14 A.M., the same date, at which time
15 it reconvened.)

16
17 (No omission here.)
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(Whereupon, the following proceedings
occurred after the recess)

JUDGE GOLDBERG: I want to repeat once more,
maybe it is the same colloquy, but just to be sure
everybody understands it, this Court is not going
to consider anything that it deems irrelevant. We
do think you will help the Court a lot if you will
simply try to keep as much of the matters relevant
as possible instead of having a lot of argument.
Let's just move along. We would hope that you would
have every confidence in the Court to the extent
that we are not going to consider anything that we
do not think is irrelevant, incompetent or material.
I will say that again and again and again. As I
said at the beginning, time is of extreme importance
to everyone in this case. Somebody is going to
want somebody else to say we are right or wrong,
and I plead with you, once again, to keep that
constantly in your mind. Now, proceed.

MR. NELKIN: Your Honor, we have just received
a deposition that has an exhibit attached to it and
I would like, if I could, to just for a very short
minute to deal with it.

JUDGE JUSTICE: Whose deposition are you
referring to?

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1 MR. NELKIN: Mr. Bob Spellings, who I will
2 represent to the Court testified that he drew the
3 maps of the Senate. We don't have an exhibit number
4 on this because we didn't list--

5 JUDGE JUSTICE: What is your last exhibit
6 number?

7 MR. NELKIN: I beg your pardon, this is
8 Mr. Armstrong's deposition. I beg your pardon.

9 THE CLERK: It should be Exhibit Number 22.

10 JUDGE JUSTICE: The exhibit you are making
11 reference to will be your 22, then.

12 MR. BERG: 21.

13 JUDGE JUSTICE: 21?

14 MR. NELKIN CONTINUES:

15
16 Q Dr. Murray, I will show you what has been
17 marked for identification as Plaintiffs' Exhibit 21, which
18 is an attachment to a deposition of Mr. Bob Armstrong, a
19 defendant in this case, and I would ask you to comment upon
20 the similarity of destruction of the core area in that plan
21 and the plan as presently enacted.

22 JUDGE JUSTICE: As shown on what exhibit?

23 MR. NELKIN: As shown on Exhibit--

24 A 21.

25 MR. NELKIN: --on Exhibit 11.

1 A There is a very great similarity between
2 Exhibits 21 and 11, particularly as they divide the central
3 city and the racial concentration-- ethnic, racial minority
4 concentrations. It looks like two of the districts are
5 almost exactly similar. What is labeled here as the core
6 in the south or the 15th and the 7th on the board enacted
7 plan and the southeast district is very similar to District
8 11 as shown there. There are differences, some differences.
9 in 13 and 6. So, three districts are basically the same,
10 two are somewhat similar but with fairly important differences.

11 Q All right.

12 JUDGE GOLDBERG: This deposition, again, what
13 is it going to be known as-- the Armstrong plan?

14 MR. MELKIN: The Chamber of Commerce plan. At
15 least this was in the personal knowledge of this
16 witness, as to the--

17 JUDGE GOLDBERG: Is it in the deposition?

18 MR. MELKIN: Yes, sir.

19 BY MR. MELKIN:

20
21 Q Dr. Murray, with regard to the effect on racial
22 voting strength, is there a similarity between the plan,
23 Plaintiffs' Exhibit 21 and Plaintiffs' Exhibit 11?

24 A Yes, I think it is just about the same effect.

25 Q And, what is that effect?

1 A It makes it extremely difficult for a Black
2 candidate to win an election to the State Senate.

3 MR. NELKIN: Your Honor, we would tender that
4 plan in evidence at this time.

5 JUDGE GOLDBERG: Subject to the alterations
6 the Court has. Proceed.

7 MR. NELKIN: We have no further questions.

8 MR. IDAR: I would like to make an inquiry.
9 It is my understanding, that the evidence in all of
10 the four cases that are being tried here will be
11 considered in each case.

12 JUDGE JUSTICE: You have so stipulated at the
13 pretrial conference.

14 MR. IDAR: I am associated as an intervenor in
15 the Tyler case and there would be one or two
16 questions I would like to ask this witness as
17 pertains to the Mexican-Americans in Houston. I
18 just wonder if I should do that at this time or--

19 JUDGE WOOD: Well, do it now because he won't
20 be here later.

21 JUDGE GOLDBERG: Mr. Curry, is it all right to
22 do that now?

23 MR. CURRY: Yes, sir.
24
25

CROSS EXAMINATION

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Questions by Mr. Idar:

Q Dr. Murray, I have one or two questions here as relates to the Mexican-Americans in Harris County and Houston. To begin with I notice that you have used the term "Blacks, Mexican-Americans and Whites". Are you distinguishing between those three groups on the basis of ethnicity or racial factors?

A Ethnicity, voting behavior.

Q You consider them three distinct ethnic groups or ethnic groups?

A Yes. I think they behave differently politically, and there are obvious socioeconomic differences with each group.

Q Could you very briefly give us the reason for distinguishing the Mexican-American as between the-- contrasting that group to the White and the Black?

A Well, I think if you look at housing patterns, educational levels, there are systematic distinctions that can be drawn between the conditions in which people live, education they have received-- If you look at their political behavior, their votes in various elections there are very distinct patterns associated with all three groups.

Q Okay. Now, as related to Mexican-Americans,

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1 I believe you testified that they constituted the smallest
2 minority group in Houston although it was the fastest growing
3 one. You further testified that it was the most dispersed
4 and that no census tract consisted entirely of Mexican-
5 Americans. Could you give us some rough idea as to what
6 the per cent of Mexican-American population in Houston would
7 be?

8 A In Harris County it is approaching ten per cent.

9 Q And in the city itself?

10 A In the city of Houston it is about twelve or
11 thirteen per cent, I believe.

12 Q What would you consider to be the largest
13 concentration of Mexican-Americans, either in the city or
14 in Harris County?

15 A The largest concentration is in the canal
16 navigation area of Houston, which is very near the center
17 of the city and runs sort of southeast from downtown Houston.

18 Q Do you have any idea, in round numbers, as to
19 how many thousand people might be involved in that particular
20 concentration?

21 A Yes. The census tracts there that are heavily
22 Mexican-American include about sixty to seventy thousand
23 people. There are many Anglos and some Blacks in those
24 tracts, but they are predominantly Mexican-American.

25 MR. IDAR: Thank you.

1 JUDGE GOLDBERG: Is that the part of the core
2 to which you have been referring?

3 A Yes. They live near the center of the city--
4 in the old city of Houston.

5 MR. IDAR: I must ask one more question,
6 Doctor.

7 BY MR. IDAR:

8
9 Q You were testifying as to the voting patterns
10 as between the Blacks and the White in your city and school
11 elections and you indicated that when it comes to city and
12 school elections as a rule your quite affluent areas-- that
13 is, with a Black candidate on your ticket had the best vote.
14 Then, you made a statement that the reverse was true when it
15 related to legislative races, and you went on further to
16 indicate that this was not particularly unique to Houston
17 alone. Did you have any basic information that might tie in
18 that observation of views to any other parts of Texas?

19 A No.

20 MR. IDAR: All right. Thank you.

21 JUDGE JUSTICE: You may cross examine, Mr.
22 Curry.

CROSS EXAMINATIONQuestions by Mr. Curry:

Q Dr. Murray, I believe earlier you indicated to the Court in your testimony that there was what you referred to as a central city or central core which, I believe, you identified as being certain census tracts that were identified by the 1940 census; is that what you were referring to?

A I think that is the best operational definition of the core city.

Q And, I believe you indicated that the Black population was tending to concentrate within the core city.

A It is growing rapidly in that direction.

Q Are you aware that according to the Harris County-- Excuse me. Let me find the exhibits, Your Honor. Your Honor, it is Plaintiffs' Exhibit 19 which we had a reservation about. Our objection was simply we put it in altogether, the Plaintiffs and Defendants did. It is a big volume and so we have just reserved objections as to those portions within the volume of the exhibit that do not-- that are not limited specifically to Harris County. It includes a metropolitan area beyond the county lines and we have no objection to anything that relates to Harris County only, but we have reserved the objections to the other.

1 BY MR. CURRY:

2
3 Q So, I will direct your attention to the Houston
4 Chamber of Commerce census data research, and are you aware
5 that according to the distribution of the Harris County
6 total Negro population by major geographical areas, the
7 comparison between 1960 and 1970, that the central area of
8 the Negro population was approximately fifty-one per cent--
9 Excuse me. Approximately fifty-one per cent of the Black
10 population lived within the central area that you have
11 defined in 1960, but as of 1970, according to this report,
12 it has been reduced by-- to thirty-eight point nine per cent
13 within that same central area. Are you aware of that?

14 A Yes. But, the proportion has gone up.

15 Q All right. Are you aware that the 1960
16 population of Blacks within that central core district that
17 you have defined was 127,467 Blacks, and according to the
18 1970 report there was only 136,461, which I gather to be
19 less than a 9,000 increase?

20 A Yes. What were the White figures for the
21 comparative years?

22 Q Well, I have those in the report but I don't
23 have them immediately before me. Well, excuse me. No, I
24 don't have any. But, according to that exhibit the actual
25 increase is approximately 9,000. And, there has been, in

1 fact, a decrease of the Black population within that central
2 core district, is that correct? 85

3 A Well, if it increased by 9,000 it didn't
4 decrease, is that right? The total population decreased but
5 the Black population increased slightly. You are saying
6 their proportion of the county's population-- there are
7 350,000 Blacks in Harris County and there were 232,000 Blacks
8 in 1960 in Harris County. In 1960 half of them lived in the
9 central district, that is right. In 1970 only thirty-eight
10 per cent lived in the central city, but that is a blacker
11 area now than it was in 1960.

12 Q May I show this to the witness, Your Honor?

13 JUDGE GOLDBERG: Sure.

14 BY MR. CURRY:

15
16 Q For the Court and for the record, I would
17 identify this as part of the exhibit that we have been
18 referring to, but this particular one appears as Table 17,
19 which is page 21 of section 101.

20 JUDGE JUSTICE: The number of the exhibit is?

21 MR. CURRY: It is 19, Your Honor. It is
22 Plaintiffs' Exhibit 19.

23 BY MR. CURRY:

24
25 Q According to this record, in 1960 the Black

1 population in the central area of the total Harris County
2 population was 51.7 per cent, is that correct?

3 A That is right.

4 Q In 1970 it shows that the Black population,
5 within the central area, of being only 38.9 per cent of the
6 total population, is that correct?

7 A That is right.

8 Q And, it shows a decrease of 7.1 per cent in
9 connection with the total population, is that correct?

10 A As a proportion of the total Black population.
11 The number of Blacks actually goes up. The proportion of
12 the total Black population goes down but the Black population
13 proportion of the central district goes up too. In other
14 words, while the Blacks--

15 Q The White goes up to?

16 A No, because the Whites moved out. The central
17 district as a whole lost population. I know it is one of
18 those tricky statistical things, but. The central business
19 district, like many other areas, is becoming ever more Black
20 and brown.

21 Q Is it not true the Blacks are also moving to
22 the suburbs?

23 A They are certainly dispersing, but much of the
24 Black population is very near the core and would probably
25 be included in any congressional or senatorial district that

1 was based on the core.

2 Q Now, in connection with your testimony relative
3 to Senator Jordan, Senator Jordan was elected in 1966 and
4 her opponent or opponents were White, were they not?

5 A Yes.

6 Q She was elected, correct?

7 A She was elected.

8 Q She did not have a majority of Blacks within
9 her district, did she?

10 A She did not.

11 Q And, even according to your new proposal it
12 would not call for a majority of Blacks?

13 A That is correct.

14 Q In fact, the Black candidate would be required
15 to have support from the Whites in order to be elected?

16 A Not necessarily. Selective turnout patterns,
17 particularly in the Democratic primary, which is the crucial
18 election, will mean that a Black could win with nothing but
19 Black votes.

20 Q In that regard, I believe you testified that--
21 I believe your word was that there were certain areas of
22 White that had politically disproportionate districts
23 because they tended to vote and register in greater numbers
24 and vote in greater numbers. As a factual matter, the
25 Blacks could vote in greater numbers and could register in

1 greater numbers, couldn't they?

2 A They certainly could.

3 Q Now, you are familiar with Justin Robinson, Jr.
4 who was recently elected to the City Council?

5 A Yes.

6 Q As well as I understand it, he is being sworn
7 in this morning. His candidate was an incumbent candidate
8 and an additional White candidate, is that correct?

9 A That is correct.

10 Q He actually defeated both of those candidates
11 by an excess of-- he got over fifty per cent of the total
12 vote, did he not?

13 A Slightly more than fifty per cent.

14 Q That election was at large, was it not?

15 A Within the city of Houston at large.

16 Q Of course, Mr. Robinson is Black?

17 A Yes.

18 Q Is he not also a member of the State Executive
19 Democratic Committee?

20 A Yes.

21 Q Are you familiar with the Senate plan that was
22 adopted by the Senate prior to the current acts which are
23 in dispute in this case?

24 A The recommended plan that the Harris County
25 senators proposed?

1 Q No, sir. The plan that was adopted by the
2 Senate of the State of Texas-- Senate Resolution 35.

3 A In 1971?

4 Q Yes, sir.

5 A No, I am not.

6 JUDGE GOLDBERG: Is that plan held--

7 A There was no Senate plan enacted, was there?
8 They didn't act and thus the Board acted in their stead.
9 The House enacted a plan but the Senate never got around to
10 it.

11 Q All right. Then, it is Senate Resolution 35
12 proposed by Senator Jordan.

13 A That is the Harris County Senators' proposal
14 which was rejected by the Board.

15 Q Are you familiar with that plan?

16 A I have a moderate familiarity with it. I have
17 scanned it in the newspapers. I have not looked at a
18 detailed map of it.

1 Cross Examination - Murray

30

2 Q Are you familiar with Senator Graves --
3 excuse me. Representative Graves' plan, the Plaintiff in
4 this case?

5 A I looked at it just a moment ago on the table.
6 I had not seen it before then.

7 MR. CUNRY: Your Honor, for the Court's
8 information, this is Defendant's Exhibit H-6. We
9 undertook, for the convenience of the parties, to
10 identify all Defendants' Exhibits in the Harris
11 County case with the prefix of "H" for ready
12 reference. May I show this to the witness?

13 (The instrument was handed to the
14 witness).

15 BY MR. CUNRY:

16
17 Q Mr. Murray, I direct your attention to the
18 proposed Graves Plan which is the exhibit you have before
19 you and direct your attention to District, I believe 4. Is
20 that correct?

21 MR. MURKIN: Excuse me, Your Honor. That
22 particular map is not one of those which was agreed
23 upon as in evidence. We reserved an objection on
24 the basis of relevancy with regard to that particular
25 map, inasmuch as we thought the issue in this case

Cross Examination - Murray

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were, one, the motives and the effect of the Board's district, as well as our proposed plan. We have seen a list of proposed exhibits on the part of the Defendant, which would be several plans which were proposed by various parties, Senate resolutions and that type of thing, and we object to that on the basis of relevancy.

JUDGE GOLDBERG: We will receive it in evidence subject to all of the matters previously discussed with respect to your offer.

Questions by Mr. Curry:

Q Do you know Mr. Graves?

A Yes.

Q Is he seated here at the Plaintiff's table?

A Yes.

Q I direct your attention again to what has been designated as District 4 on the Plan and would you express an opinion as to whether or not that contains gerrymandering for the purpose of insuring the election of a Black?

A Well, it is a proposed district that pulls together a very substantial majority of the Blacks in Harris County. You have to draw a very odd-shaped district to do

1 Cross Examination - Murray 92

2 it. So if gerrymander is odd-shaped, then it is a gerry-
3 mander.

4 Q Had you examined that or are you familiar
5 with what would be the total population of Blacks within that
6 district?

7 A I think Representative Graves just said it
8 would be 80 percent. That looks like it is right from face
9 validity of scanning.

10 Q You do not quarrel with that estimate?

11 A No. It looks good to me.

12 Q Will you tell the Court in connection with
13 your opinion as to what the various factors that you consider
14 are important for purposes of determining a district and in
15 this case, a Senatorial District? Would you tell the Court
16 what, in your opinion, is the primary rule -- the absolute
17 primary rule?

18 A I have no absolutely primary rule. In this
19 instance, the proposed plan that I drew up was more or less
20 following guidelines, particularly those indicated by Mr.
21 Spellings in his attempt. But I, personally, have no
22 philosophy of districting.

23 Q Then, in your opinion, the primary rule of
24 one man-one vote, as has been expressed by the Supreme Court
25 of the United States, is not, in your opinion, the primary

1 Cross Examination - Murray

2 rule?

3 A That is a reality that drawers of maps deal
4 with now. And as a realist, I would respect their opinion.

5 Q Have you undertaken -- excuse me. Strike
6 that. I believe you expressed earlier that in your opinion
7 it was your opinion that Barbara Jordan's former Senatorial
8 District had approximately 37 or 38 percent Black vote?

9 A That is approximately correct.

10 Q From which she was elected. That was 1966?

11 A Right.

12 Q All right. Are you aware of the approximate
13 vote according to the 1970 census in the current act for
14 that Senatorial district?

15 A In the same numbered district?

16 Q Yes.

17 A 37.1 percent, I believe.

18 Q It is approximately the same percentage of
19 Black vote?

20 A It is very close.

21 Q In connection with your study of the State
22 and City election patterns and political science, have you
23 become informed on the distinction between Home Rule cities
24 and non-Home Rule cities?

25 A I have a very vague understanding. I

1 Cross Examination - Murray
2 certainly not expert in that area.

3 Q All right. I will ask you whether or not
4 you are familiar that cities within the State of Texas
5 having a population in excess of 5,000 may elect to be a
6 Home Rule city?

7 A Yes. I am familiar with that provision.

8 Q Are you aware that under the constitution
9 and the statutes of the State of Texas, such a city may
10 undertake to enact -- it is first of all given certain
11 enumerated powers which substantially cover the areas of
12 local interests, including police protection, sanitation,
13 water, hospitals and things of that nature in health,
14 education and welfare? Are you aware of that?

15 A Yes.

16 Q And I believe you have testified that it is
17 in the areas of these Home Rule cities, or at least in
18 Houston --

19 MR. CUNY: -- which I may explain to the
20 Court, one of our exhibits that is not objected
21 to, identifies the Home Rule cities within Harris
22 County and Houston is one of those.

23 Q And I believe it is your testimony that in
24 Houston, in the City elections, the pattern of voting has
25 nothing to do, or at least it is bound enough that Blacks

1 Cross Examination - Murphy

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2 and Mexican-Americans are, in fact, successful in these
3 elections. That it is a different pattern?

4 A I think they have a more difficult read than
5 a white candidate. It is possible for them to win, if the
6 circumstances are right, but raises an added burden, I
7 think.

8 Q Yes, sir. I understand at this time, but
9 what I am directing your attention to is, I believe you
10 testified that in your opinion voting in Harris County had
11 two patterns; one was in local elections which was distinct
12 and separate from State elections?

13 A In the white community with Black candidates,
14 especially on the ballot.

15 Q And I believe your conclusion was that they
16 had infinitely -- or at least, greater success in local
17 elections than they did in State elections? Is that correct?

18 A Yes. In part. Because -- well, like the
19 City of Houston is considerably blacker than Harris County
20 as a whole. The Houston Independent School District is a
21 very favorable district now for Black elections, which is
22 not terminate with the City. A large part of the City is
23 excluded from the district.

24 Q If I told you in addition to Houston, there
25 are many other cities in Harris County that are also home

1 Cross Examination - Murray

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2 Rule cities, I think the same pattern would apply, would it
3 not? I am not asking that on the voting pattern; I am saying
4 as far as a local control of local interest.

5 A Surely.

6 Q So that the State participation in items of
7 legislation generally relate to matters of general concern
8 for the County, rather than specific concerns for specific
9 small segregated area?

10 A I would disagree.

11 Q Would you tell the Court why you disagree?

12 A Well, take the example of housing. The
13 Government of the State of Texas has in recent public
14 announcements called attention to this problem, a need for
15 action. I think it is a problem that if it is going to be
16 built with success, has to be dealt with at a State level.
17 The State is the primary collector and spender of money
18 here and housing is a critical problem in a central city.
19 That is where the greatest amount of dilapidated and
20 deteriorated housing is, and I think the State Legislature
21 has a considerable input to a problem like that. Problems
22 of mass transit are probably going to require a State input
23 or Federal input. I don't think the local municipalities
24 have demonstrated in the past, and I don't think they can
25 in the future, an ability to solve it. They are staggering

Cross Examination - Murray

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problems that the residents in the larger cities of Central and South Texas are faced with right now.

Q Do you think that in a proposed plan, particularly one that is submitted by Mr. Graves, whereby one Black is presumably assured a vote, that necessarily increases the effective representation of many in the State Legislature when it requires the at large vote of all of the Senators?

A Could you run the question by once more?

Q The point I'm making is, that in matters of State Legislation, it is a matter of concern for the entire County and it is a matter of concern for the Senators of the entire State and not peculiarly within simply one district's toll group and in order to make any headway or progress, it requires the support of not only the County's Senator, but State Senators?

A I think any one Senator can be powerful. 12 Senators in Texas can be extremely powerful. I don't know that it requires all of the Senators from Harris County to be affected. They rarely agree now, and I doubt that they will in the future agree. I think we would express their Senators's interest to be --

(Nothing omitted here).

CROSS-EXAMINATION - Murray

Q Senator Jordan has announced to run for Congress, has she not?

A Yes.

Q And, as a matter of fact, Representative Graves has announced to run for Congress, has he not?

A That's correct.

Q They are running in congressional districts that are not districts in which blacks have a majority?

A Very nearly. There is a core congressional district which includes virtually all the central city. There is not a black majority absolutely, but probable voting strength would give the blacks very nearly a majority---.

Q Excuse me. May I confer with Counsel?

(REPORTER'S NOTE: Counsel confer out of the hearing of the court reporter.)

MR. CUNY: My co-counsel, Your Honor, has suggested that I call to the Court's attention---

Where is the Pretrial Order on this case?

CROSS-EXAMINATION - Murray

(REPORTER'S NOTE: Counsel obtains document.)

MR. CUNRY: It has been stipulated that no evidence will be introduced to support any claim that anyone has been denied the right to register to vote by physical intimidation or harassment since the 1961 apportionment. No evidence will be introduced to support any claim that any person was denied the right to choose his or her political party.

BY MR. CUNRY:

Q I would ask you in your opinion which is the dominant political party in Harris County in state elections?

A It depends on the district. Republicans win in any district that is on the west side. Democrats win in the rest of the counties.

Q The question was for the county.

A If you had a county-wide race, Democrats.

Q And how do blacks normally vote?

A They vote almost exclusively in the Democratic

1 CROSS-EXAMINATION - Murray

2 MR. CURRY: Thank you.

3 JUDGE JUSTICE: Is there redirect examina-
4 tion?

5
6 REDIRECT EXAMINATION

7
8 BY MR. WELKIN:

9
10 Q Dr. Murray, with respect to the similarity
11 of percentages---

12 JUDGE GOLDEN: I didn't hear the
13 first part of the question.

14 Q With respect to the similarity of percentages
15 in Senator Jordan's old district and in the new senatorial
16 district, which contains 38.1 percent, is there, neverthe-
17 less, a dilution of the black voting strength by virtue of
18 the other people in the district?

19 A I think there is. Senator Jordan ran county-
20 wide in 1964 and was defeated. In her present district she
21 ran five percentage points higher in the new district, which
22 has the same percentage of blacks, and the primary reason
23 for that is that you have different whites in the new dis-
24 trict that has 37 percent black, as opposed to the old
25 district that she was elected from, which was basically a

CROSS-EXAMINATION - Murray

northside or ship channel district.

Q Again, on the issue of the Judson Robinson election, you indicated that the City of Houston is blacker than Harris County.

I would ask with respect to the question of the whites who are left in the city, as opposed to the whites in the county, not in the city, such as Spring Branch, if there is, in fact, a conservative element that is left out of city politics.

A Oh, very definitely.

Q So it is not only a question of numbers; it is also a question of politics?

A Yes.

Q Now, on the issue of blacks voting in the Democratic primary, is there a distinction made in Harris County between liberals and conservative Democrats?

A A rather clear distinction can be made in most races.

Q So that the fair question is, do blacks vote for liberal or conservative Democrats. What would be the answer to that?

A Liberal Democrats.

Q So, the fact that Democrats are elected and blacks voted in the Democratic primary, does not necessarily

CROSS-EXAMINATION - Murray

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mean that the Democrats who were elected represent blacks adequately?

A No.

MR. NELKIN: That's all.

JUDGE GOLDBERG: Anything further?

MR. CURRY: We have no questions, Your

Honor.

(WITNESS STANDS ASIDE.)

MR. BERG: May it please the Court, my name is David Berg, and I am going to proceed with Mr. Bob Armstrong.

BOB ARMSTRONG,

a witness called by the Plaintiffs, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. BERG:

Q May it please the Court.

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Would you state your name for the record, please?

A My name is Bob Armstrong.

Q Are you at this time a defendant in this cause of action?

A I am Defendant in some of the causes that are now consolidated before this Court.

Q I am referring specifically at this time to the Harris County cause of action brought against the Redistricting Board.

A I think that is correct, yes.

Q At this point, Mr. Armstrong, would you state for the Court what your position was in respect to redistricting, what position you occupied on the Board?

A I am Commissioner of the General Land Office.

Q And as such, you are a member of the Senate Redistricting Board?

A That's correct.

Q Mr. Armstrong, you have been deposed previously this week, have you not?

A Yes, I believe at the end of last week.

MR. BEHC: Your Honor, at this time

I have in my hand a deposition of Mr.

Armstrong. I see that he has not signed it,

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2 but we would like to mark it at this time
3 and offer it. It will be -- I don't know
4 the number. I think it is 22.

5 MR. CURRY: Your Honor, I perhaps
6 should defer this to my co-counsel, since
7 I wasn't present at the deposition. I think
8 he will have to handle this witness. I will
9 defer to Mr. McDaniel.

10 MR. McDANIEL: Your Honor, we had assumed
11 the deposition would be treated like any
12 other depositions. They would designate what
13 portions they wanted to offer, and we would
14 designate what portions we wanted to offer,
15 and either side could make such objections
16 at the time that they thought proper. That
17 was our agreement at the time we took the
18 deposition.

19 MR. BENS: At this point, Your Honor,
20 our primary concern is only on the questions
21 asked by me, which start at Page 33. We can
22 limit it to my questioning for these purposes,
23 the questions on Pages 33 through 36.

24 JUDGE COLWELL: You want to put that
25 in instead of asking him questions?

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MR. BERG: Yes, Your Honor, except that I need to go into another matter also with Mr. Armstrong not covered by the deposition.

JUDGE GOLDBERG: Do you object to his using Pages -- what was it -- 337

MR. BERG: To 50.

JUDGE GOLDBERG: Of the deposition.

MR. McDANIEL: So long as I have time to read the deposition---

JUDGE GOLDBERG: You may have the time, and you may make such objections, and we will consider it.

MR. McDANIEL: Thank you, Your Honor.

JUDGE JUSTICE: You want to summarize what is in the deposition?

MR. BERG: Yes, I do.

Mr. Armstrong testified that he was concerned that the core of the city, the black vote was diluted by the plan drawn by the Board, and that is exactly what I want to go over with him at this time but to get into another matter not previously covered, I feel, as well.

(REPORTER'S NOTE: The Court here

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confer out of the hearing of the
court reporter.)

JUDGE GOLDBERG: If it is in here, do you
want to go over this same thing again?

MR. BERG: I am not going to take but one
question.

JUDGE GOLDBERG: Well, go ahead.

MR. BERG: Your Honor, to summarize, further
he did not sign the Senatorial Redistricting
Board's plan.

JUDGE GOLDBERG: He didn't?

MR. BERG: No, and that is also in the
deposition.

BY MR. BERG:

Q Mr. Commissioner, is that a fair statement
of what you said in your deposition, that you were con-
cerned over the Board's plan in that it diluted the black
voting strength in Harris County?

A That is correct.

Q Mr. Commissioner, is it correct that you did
not sign the Senate Redistricting Board plan because of that
reason?

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A Because of that reason and some reservations I had about some of the other districts, but that was the basic reason.

MR. BERG: Some of those reservations, if I might summarise, Mr. Armstrong testified that he was concerned about contiguity, compactness of the districts drawn and so on, all the various standards he felt were not met by the Senatorial Redistricting Board.

A That is correct, and I might add in Bexar County, as well as Harris.

Q Mr. Commissioner, may I ask you at this time whether or not either prior to or very close in relation to time that the Board drew its map you had an opportunity to discuss the map with Representative Sissy Farenthold?

A I had a number of discussions with Representative Farenthold throughout the course of redistricting, some about House plan and some about the Senate plan. I would think that I in all probability did talk to her, although it is not clear to me right now in my mind which meeting you are talking about or which discussion.

Q All right. Let me bring it to hand what I am speaking of. Did she at any time indicate to you during

1 DIRECT EXAMINATION - Armstrong 108

2 the time it was being drawn or close by the time that it
3 was drawn that she was concerned and had been told by Gus
4 Matscher that Ben Barnes was committed to the Chronicle in
5 drawing this map?

6 MR. CURRY: Your Honor---

7 MR. McDANIEL: Your Honor---

8 MR. CURRY: Excuse me, I'm not supposed
9 to make objections. I'm sorry.

10 (LADONTER)

11 JUDGE GOLDBERG: That's all right, Mr.
12 Curry.

13 MR. McDANIEL: Keeping in mind what the
14 Court admonished all of us earlier, I can't
15 help but get up and point out that this is
16 about third-hand hearsay and, well, I will
17 just sit down and trust the Court to take
18 the evidence for what it is worth.

19 MR. BERG: Your Honor, may I speak to
20 that point briefly?

21 JUDGE GOLDBERG: You may speak to the
22 point but---

23 MR. BERG: These are all named Defendants
24 in the lawsuit. It is considered an admission
25 against interest, and we want to go into

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motivation in drawing this map, which we consider to be a product of business interests in Harris County.

MR. McDANIEL: I certainly would assert that nothing he has said so far indicates any admission against interest.

JUDGE GOLDBERG: Gentlemen, I repeat again, the Court will let this evidence in with all of the reservations, the problems, everything else that goes with it.

Now, proceed.

BY MR. BERG:

Q Would you answer that question, Mr. Armstrong?

A Would you mind asking it again?

Q All right, sir.

(LAUGHTER)

Q Was Representative Farenthold concerned in her conversation with you about the conversation she had -- I will break it down -- about a conversation she had had with Gus Nutscher concerning the redistricting of the senatorial districts in Harris County?

A It would be difficult for me to pinpoint that particular conversation, but I will say that I do

1 DIRECT EXAMINATION - Armstrong

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2 recall that that question was raised to me by Representa-
3 tive Farenthold and perhaps others in the course of our
4 drafting of this plan.

5 Q And what was your response to that parti-
6 cular question?

7 A Well, I do not recall that I made a response
8 or, at least, I don't recall what my response was, but I
9 would say this. My basis objection to the plan did not
10 have anything to do with the origin of plan or the various
11 forces or cross currents that were involved.

12 My concern about the plan was its ultimate
13 effect.

14 Q I understand your concern about the plan,
15 but did you ever indicate to Representative Farenthold or
16 anyone else your concern that Everett Collier and the
17 Houston Chronicle had obtained a commitment as to how the
18 plan would be drawn from Ben Barnes?

19 A I would say that that possibility concerned
20 me, but I did not know, as a matter of fact, about any
21 such commitment or whether, in fact, Mr. Collier had
22 talked to Mr. Barnes.

23 Q What did you have that possibility on, Mr.
24 Armstrong?

25 A Well, it was just a general feeling, I think,

1 DIRECT EXAMINATION - Armstrong

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2 based on people observing who went to whose office at the
3 time that people were lobbying for their plan. I don't
4 think that this is necessarily bad. People came to see
5 me with ideas, some self-serving, but many who just wanted
6 to provide guidance, but, in any event, I think that it
7 was somewhat clear that a group of people were active and
8 lobbying the Harris County part of the plan, but, like I
9 say, I don't know what they were saying. They might have
10 had a totally different plan.

11 Q Well, is it still your opinion based on
12 the actual districts drawn by the Board -- you said you
13 held that opinion that there was a possibility that there
14 was a commitment obtained by the Chronicle. Is there any-
15 thing---?

16 JUDGE JUSTICE: Now, wait a minute.

17 JUDGE GOLDBERG: Wait a minute here.

18 Let's be sure that he said it.

19 MR. BERG: He said, if I understood---.

20 JUDGE GOLDBERG: Well, let him---. Pardon
21 me.

22 THE WITNESS: If I may volunteer this
23 statement by way of clarification.

24 JUDGE JUSTICE: Go ahead.

25 THE WITNESS: I have never felt on personal

DIRECT EXAMINATION - Armstrong

11%

knowledge that any commitment had been made or not made. I simply didn't know about this.

BY MR. BERN:

Q -- Is there anything in the new plan, Commissioner Armstrong, or the plan drawn by the Board, rather -- I think that is Exhibit 11 -- this is the new Board District plan (indicating).

Is there anything to change your opinion that the black votes were diluted by that particular plan?

A As I stated, and I don't mean to be repetitious, because it is in my deposition---

Q -- Yes, sir.

A The three census tracts at the easternmost extremity of District 15 worried me because they had been pulled out of Senator Jordan's old district, and I was concerned that if we started changing what I think the Court refers to as historical boundaries, that we had to be very careful that we did so in a manner that did not dilute the voting strength of any class, and I think this did that.

MR. BERN: That's all I have of this witness, Your Honor.

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CROSS-EXAMINATIONBY MR. McDANIEL:

Q Mr. Commissioner, I believe you indicated on depositions that you had a difference of opinion concerning how the lines of the senatorial districts in Houston should be drawn between yourself and the Attorney General and the Lt. Governor. Is that correct?

A That is correct.

Q And I believe you further testified that you talked to the Lt. Governor and to the Attorney General about the matter. Is that correct?

A That is correct.

Q Would you tell us, please, what the Lt. Governor answered when you expressed your concerns to him?

A Well, you will recall that I had presented an alternative plan, which would have shifted, as I recall, some 19,000 votes, although don't hold me to that figure.

It is whatever the total of these three census tracts happened to be -- in a manner that I felt made a more cohesive district all the way around.

His answer was that he was not concerned

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about the Black situation simply because the percentages in the new district of Blacks were greater than the percentages in Senator Jordan's district.

Q. Very slightly greater, was it not?

A. I think that's right.

Q. Now, I assume I am not under the rule. I heard the witness prior to his testify, I think, that it was maybe a little less, as it has turned out, but---

Q. I believe it is one-tenth of one percent, as a matter of fact.

A. Right, but the assumption was at that time that the percentage would be larger, and, in short, that we had a firm plan that some other members of the Board could agree upon, and he felt that this was a better procedure to follow to accept the regular plan without amending it, or the then approved plan---

Q. Did the Attorney General -- excuse me, I don't mean to interrupt your answer. I thought you were through.

Q. Did the Attorney General answer your inquiry in much the same manner?

A. I would say substantially the same way. He pointed out my amendment would have created a less compact district in District 11, and I would admit this, because it

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order that the one-man one-vote numbers requirement work it did create a gooseneck, as that term is called, and although I thought the other two districts were more compact, he also felt perhaps there was a difference of opinion between us that several Senators with a fair percentage of blacks in their districts might be more persuasive than, say, two black Senators, and there is room for argument on this.

(No admission here.)

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Q It was, so far as you were concerned, an honest difference of opinion, was it not?

A I think so.

Q Did you ever, at any time, during your discussions with the other members of the Board, have any indication or for that matter, any feeling that any member of the Board intended racial discrimination in drawing the Senatorial or House apportionment?

A If you are asking as to my opinion, rather than for a certainty, as we pointed out, I cannot look into their minds.

Q I understand.

A I can say -- I can remember no overt racial discriminatory statements made or anything that would have caused me alarm by a member of the Board.

Q All right. Now, I believe that you stated on deposition also, that the plan presented by Representative Graves was not objectionable to you? Is that correct?

A It is hard to remember each plan in detail, but my basic recollection was that it cured the problems that I was worried about.

Q The basic question, I think, it is fair to characterize, being whether or not it was more desirable to provide one district with a heavy concentration of Black

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voters or several districts with a somewhat lesser concentration of Black voters. I am characterizing that as the difference between the Graves plan and the other plan. Is that accurate?

A It is accurate, except that we tend to talk too much, I think, in terms of Black interests as opposed to what I think we were dealing with at that time, which was greater than that. It was the interest of the core city.

Q All right.

A The community of interests of the impoverished no matter what color. Now, it happens that most Blacks live there, but with that addition that we are talking about, the core, perhaps as opposed to just the Black core.

Q You would agree, I take it, then, that what we are concerned with is not so much a Black problem as opposed to a white problem, but rather a problem of poverty as opposed to problems which are not peculiar to people who are in the straits of poverty, whatever their race may be?

A I don't believe they are mutually exclusive. I think this is what the redistricting cases are about; the community of interest and the race and parties.

Q All right.

A And these are the things that you want to

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keep together, as I understand a district, and you don't want to dilute.

Q All right. Now, concerning your conversation relative to the second-hand relation from Speaker Mutscher, my only question regarding that is that Speaker Mutscher, for whatever his reasons may have been, did not sign the Senatorial apportionment either, did he?

A No, he did not.

MR. McDANIEL: I believe that's all I have, Your Honor.

MR. KING: We have nothing further, Your Honor.

JUDGE GOLDBERG: Any questions? You are excused.

JUDGE JUSTICE: Please call your next witness.

CHURCH CRAWFORD.

called as a Witness on behalf of the Plaintiff, after having been first duly cautioned and sworn to testify to the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

Questions by Mr. King:

Direct Examination - Graves:

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Q State your name for the record, please.

A Curtis Graves.

Q Mr. Graves, you are a resident of Harris County, Texas? Is that correct?

A Yes.

Q You have resided there for how long, sir?

A For about 12 years.

Q And can you tell this Court your present position?

A I am a member of the State House of Representatives, District 23, Position 6.

Q When were you first elected, Representative Graves?

A '66.

Q And you ran again in '68?

A '68 and in '70.

Q And won all three times?

A Right.

Q Were those the only three races you have ever made?

A No. I was a candidate for Mayor of the City of Houston in 1969.

Q And the outcome of that, of course, has been established by Professor Murray; you lost that race?

Direct Examination - Graves

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A Right.

Q Representative Graves, you are familiar, are you not, with the Board's district, the new Plan drawn by the Senate Redistricting Committee?

A Right.

Q You heard Professor Murray testify this morning what he considered the net effect of those particular lines to be. That is, the dilution of Black votes among other things. Do you concur in that result?

A Yes, I do.

Q You are familiar, are you not, with the geographical and political structure of Harris County?

A Yes, I am, having run four races there, I am pretty familiar.

Q Can you tell us, Representative Graves, in the New Plan, where you live?

A I live -- Commissioner Armstrong calls it the "goose-neck", and I call it the "fickle finger". I live in 15, in the little finger that is sticking out into the six. Right.

Q And do you live within a block of this border line?

A That's right.

Q Of the outermost point of that border line?

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A Right.

JUDGE JUSTICE: For the record, you are referring to the Easternmost portion of the District, are you not?

A Of District 15, yes, sir.

Q Yes, sir. Now, within that same district, Representative Graves, there is -- exists an area called "River Oaks", does there not?

A It is more central and more western in the same District 15.

Q You have heard it characterized, and would you agree that it is one of the most opulent and affluent areas in the City?

A One of the most affluent that I know of in the State of Texas.

Q In addition to yourself, in District 15, do there live other Blacks? Is that correct?

A That's correct.

Q Referring to Plaintiff's Exhibit -- I am referring to Plaintiffs' Exhibit 18, within the -- what is District 15, using this as a basis and your own personal knowledge of Houston Harris County, does there also exist a poverty pocket within 15?

A That's correct.

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Q Now, can you tell me what you, as an individual or what the other Black or poor citizens of that area have in common with River Oaks?

A Precisely nothing.

Q Can you tell me, sir, if that map makes geographic sense to you?

A No, it doesn't. I think it was drawn up for three reasons. One of which being the fact that it would elect Mr. Ogg to District 15. The second reason, that it would elect Mr. Lamon to Position 7. And the third reason that it would systematically disfranchise us from ever seeking a Senate seat.

Q And what did their intention, in your estimation, -- does this map keep a Black from being elected in Harris County to the Senate?

A To my knowledge, it would. For at least the next 10 years.

Q In your past experience within the House of Representatives, in introducing legislation into that House, in working with the Senate, how would you characterize the support you have received from white Legislators?

A Well, it varies. Depending upon legislation. I have received a lot of support for some measures that are totally concerned with all of Harris County and I

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have received no support or relatively no support for other measures that are peculiarly concerned with the ethnic background that I come from.

Q In dealing with other Legislators, I suppose you are not limiting this just to the House?

A No. It is the same way in the Senate.

Q Would you say there is a lack of interest or would you say it goes beyond just a lack of interest in sponsoring Black-oriented Legislation?

A Well, it goes from lack of interest to flat no interest at all. There are two Blacks in the Texas House of Representatives, and the majority of legislation that is peculiarly aimed at alleviating some problems in their areas have come from those two Black elected officials.

Q Would you state whether that lack of interest or no interest at all goes one step beyond into a positive antagonism on the part of some members of both the House and Senate in Texas?

A I can categorically say it is an antagonistic thing. I have seen bills that have no racial overtones be defeated because I was the sponsor, or because a Black person was the sponsor.

Q Do you consider, based upon your experience in the Legislature, that Blacks who reside within the district

Direct Examination - Graves

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of whites, are properly represented within the House and the Senate of Texas?

A Repeat the question.

Q Do you consider, based upon your experience

in the Legislature, that Blacks who reside within the District of whites are properly represented within the House and the Senate of Texas?

A No, they are not.

Q Can you state why not? What indicates that to you, other than just -- that the antagonism towards your legislation?

A The preponderance of mail and telephone calls and contacts that I received from not only my legislative district, not only the City of Houston, not only the County of Harris, not only the Southern part of Texas, but all of Texas, Louisiana, Mississippi and Arkansas. I have been forced to be a representative for many more people than I would choose to.

(Nothing omitted here)

Direct Examination - Graves

Q Representative Graves, does this indicate to you-- well, let me go back to a question Mr. MacDaniel placed to Mr. Murray and it seemed to indicate that need not only one man in the Senate, but no matter who is elected from Harris County, are going to need the help of other Senators in passing legislation. Do you remember that testimony?

A Yes, I do.

Q Does this indicate to you the need that that man be White to get along with other senators?

A No. I don't think so. I think there should be a difference. I think there should be a difference of opinion and of ethnic backgrounds in the State Senate so that all views can be heard.

Q Well, in that regard, you have been accused of gerrymandering a Black district.

A Yeah, I did one.

Q And in that regard, sir, do you feel that-- and based upon what you have told us and something I am going to ask you about in a moment, concerning race relations in Houston, do you feel that there is an extraordinary need for Black representation in the Senate in Texas?

A I think that there is, based upon the knowledge that I have. I think that if there is not the Black

viewpoint in the State Senate, you are going to have problems in Texas. I think that the Black viewpoint at this point in our history is vital to the existence of Blacks. If people can't take legitimate means to solve-- to have their grievances aired, they take illegitimate means to air their grievances. This is some of the testimony I gave before the Board when I appeared before them.

Q Now, the Black and White split in the legislature, is that rare or does that appear on many occasions? Strikes that question. When there is Black legislation or Black-oriented legislation, is there a split that occurs rarely or frequently?

A When there is Black legislation or Black-oriented legislation, there is a split that occurs almost every time.

Q Let's talk about Houston for a moment, Representative Graves. You ran for a city office in Houston, did you not?

A Right.

Q You ran for mayor in '69?

A Right.

Q In that particular race, there first began to develop an issue which recently crystallized concerning the police in Houston, Texas? Is that correct, sir?

A That is correct.

Q Can you tell us briefly who that issue revolves around and inform the Court why it is important to Blacks in Houston and what the result has been?

A It revolves around--

MR. CURRY: Excuse me. Your Honor, I simply want to observe that this falls within the category that we reserved before and I think the Court will treat it accordingly.

JUDGE GOLDBERG: Go ahead.

A It involves Police Chief Herman Short.

Q And Blacks in Houston--

A --They feel he is not akin to them or treating them as fairly as he is other parts of the community.

Q That there is a dispirit or different treatment of policemen with Blacks than with Whites in the city of Houston?

A Yes, sir.

Q This recently came to light in another election, did it not?

A Yes, it did.

Q Now, can you tell us offhand-- I believe the figures are in evidence or we will place them now, but do you know the percentage of Blacks that voted for the last mayor in the last Houston race for mayor?

A About three per cent or so.

1 Q. Well, if it is four per cent--

2 A. Four per cent or something like that.

3 Q. Is it your opinion that that split in the
4 black vote, the heavily-- well, let me ask you this: The
5 present mayor, Mayor Welch, is he identified closely with
6 Chief Short in Houston?

7 A. Yes.

8 Q. Would you say the reason for that vote was
9 because of Chief Short's issue, in part?

10 A. I think that would be the primary requisite.

11 Q. Is it your testimony then that race relations
12 in Houston are not good at this time?

13 A. I think possibly they are at-- if not the
14 lowest, at nearly the lowest ebb.

15 Q. That the city is polarized?

16 A. The city is polarized and there is a deep
17 cleavage between the city's White community and the Black
18 community.

19 Q. I am asking this question because this again
20 points up the need, does it not, for Black representation
21 at the state level in the Senate?

22 A. Precisely.

23 Q. How often did you see Everett Collier enter
24 the office of Dan Barnes during the last session of the
25 legislature?

1 A Mr. Barnes, I cannot testify to, as frequently
2 as Mr. Mutscher.

3 Q Was it frequently?

4 A Mr. Mutscher, I saw Mr. Collier going into his
5 office nearly daily, but Mr. Barnes almost as much, but I am
6 not on the Senate side as much as the House side.

7 Q You are familiar with the Houston Chronicle
8 of course?

9 A Yes.

10 Q Over the last few years have you come to regard
11 it as liberal or conservative? Can you characterize it one
12 way or the other?

13 A I would characterize it as super conservative.

14 Q And does the Black community, therefore, not
15 have a basic interest within the Houston Chronicle, at
16 least editorially stated, within the Houston community?

17 A I believe so.

18 Q Do you agree with Mr. Murray's testimony that
19 the Blacks in Houston are generally liberal and are
20 Democrats?

21 A Generally liberal and Democratic.

22 Q Does the Board's district, as I previously
23 pointed out to you as Exhibit 11, guarantee, in your mind,
24 the re-election of any incumbent senators?

25 A Does it guarantee the re-election of any

1 incumbent senators?

2 Q Yes, sir.

3 A In my opinion I think two incumbent senators
4 would be able to be re-elected from the plan.

5 Q Who would they be, sir?

6 A Possibly, but I really can't say yes, because
7 I don't know the variables, and I don't know who else is
8 going to run; Senator Brooks, who lives in the Pasadena
9 area, which is by that map hooked into the-- in the city,
10 Black area, and Senator Wallace, which is north of that
11 in District 6.

12 Q Now, what about Senators Lamon and Ogg?
13 Would they have any trouble being re-elected?

14 A They are not senators now, God forbid.
15 But if their plan goes through, this District 13 would
16 be probably represented by Mr. Ogg, and Mr. Lamon would
17 be able to be elected probably in District 7.

18 Q Now, this is Exhibit marked number 10, which
19 contains the proposed districts by Professor Murray. You
20 are familiar-- you have seen this map before. We showed
21 it to you? Is that not correct?

22 A I saw it this morning, yes, sir.

23 Q And you are aware that there is only a
24 43.4 per cent in District 13-- a 43.4 Black population
25 percentages?

A That's right.

Q Is it your considered opinion that a Black could be elected from that district?

A Without any problem.

MR. NERG: I believe that's all we have.

JUDGE GOLDBERG: Any cross?

MR. CUREY: Yes, Your Honor.

CROSS EXAMINATION

Questions by Mr. Curry:

Q Mr. Graves, would you characterize Senator Jordan's effectiveness in the Senate as ineffective?

A No, I wouldn't.

Q She is Black, is she not?

A Yes, she is.

Q I believe you testified earlier that you deliberately prepared a proposed plan to gerrymander a Black district? Is that correct?

A That is exactly right.

Q Are you suggesting to the Court that a minority race should be insured by gerrymandering a position in the legislature?

A I think there should be a Black district. I drew the best possible Black district, knowing that the plan would be compromised by the Board.

Q Your purpose and your concept was to enhance or strengthen the vote of the minority group?

A Right.

Q Rather than being color blinded.

A I was not color blinded then. No one has ever accused me of that.

Q You have announced to run for Congress, have you not?

A I have announced that I am going to announce.

Q Are you familiar with the home rule city concept?

A Yes, I am.

Q Police Chief Herman Short is an issue of the home rule city, is he not?

A He is an issue in Houston, Texas.

Q Are you familiar with the constitutional provision which prohibits special legislation designed to take care of a local area?

A Yes, sir, I am.

MR. CUNY: We pass the witness, Your Honor.

JUDGE GOLDBERG: What is the demography of your present-- what is the demography of the representative district where you now reside?

A I reside in a district that is about forty per cent Black, about ten to twelve per cent Mexican-American

and the rest, Anglo.

JUDGE GOLDBERG: If you had decided to run for re-election, would you consider that district a safe one for you?

A Oh, yes. I could get elected from that district had it been kept intact for the rest of my life.

JUDGE GOLDBERG: I am not asking about any actuarial matters. I am speaking of the election that we are talking about. Was the legislative district that was created such that you could have been re-elected?

A That was a multi-member district. There were six of us that ran from that district as a slate, and I could have been elected, but that district no longer exists.

JUDGE GOLDBERG: As a single member district, do you think you could have been elected?

A As a single member district, it would have been more difficult. Much more difficult.

JUDGE GOLDBERG: More difficult?

A Much more difficult.

JUDGE GOLDBERG: Under the plan of the Board?

A No. You are confusing the two. You are

1 talking about my House district?

2 JUDGE GOLDBERG: Yes.

3 A And you are talking about a Senate district.

4 JUDGE GOLDBERG: I want to know about the
5 House district.

6 A Now the House District, as they presently
7 exist under the Board plan, I live in District Number 88
8 which is about ninety per cent Black.

9 JUDGE GOLDBERG: That is all I want to know.

10 A But I was not elected from that district.

11 JUDGE JUSTICE: I have one or two questions.

12 What particular bills did you sponsor with
13 references to the Black communities you have
14 identified?

15 A I don't know, Judge, whether we have that
16 much time, because--

17 JUDGE JUSTICE: --What are some of the more
18 outstanding ones in your judgment?

19 A In 1966 I sponsored a bill that would cause
20 Black history to be taught in the State of Texas, which is
21 now a reality, though they never did pass my bill. Last
22 session we dealt with welfare matters substantially.
23 Last session we also dealt with--

24 JUDGE JUSTICE: --What I am asking about is
25 what particular bills did you sponsor that had to

do, in your opinion, with the welfare of the Black community?

A Well, the Black History Bill, I think, was a very significant one. I introduced that twice and both times it was defeated by ten-- well, the times that the vote came to the floor, it was defeated by ten or twelve votes. The bill that I introduced this session here, dealing with hard-to-place children for adoptions dealt specifically with Black children being adopted and subsidised somewhat. The adoption of these children, who have trouble finding adoptive homes for, who are Black and Brown or physically or mentally handicapped. That bill passed into law this time, by the way, without exception.

JUDGE JUSTICE: Those are the only two?

A Well, I introduced twenty-two bills last session. I wish I had a list of them and I could kind of give you a better breakdown of them, but I can't really remember.

JUDGE JUSTICE: Were they all racially oriented?

A No. I even introduced and passed bills for the Houston Police Department.

JUDGE JUSTICE: You made reference to the fact that Senator Jordan was an effective senator.

What bills specifically related to the welfare of Blacks did she sponsor?

A. I am not familiar with Senator Jordan's legislation policies.

JUDGE JUSTICE: All right. I have no further questions.

JUDGE GOLDBERG: Anything further?

MR. BERG: Excuse me one minute, Your Honor.

REDIRECT EXAMINATION

Questions by Mr. Berg:

Q Representative Graves, we have discussed previously, legislation matters concerning something that disturbed you about denture companies in Houston.

A Right.

Q Why don't you elucidate a little bit? I think that will bring to light the problem you were discussing.

A There is a peculiar problem in Texas that has started in Houston where dental laboratories will set up a laboratory advertising in the newspapers and in the Black newspapers, primarily, that they will make dentures for you. The laboratories, in my opinion, that operate in the minority areas in many cases do not give

1 the kind of treatment that could be given to these
2 individuals--

3 Q --Excuse me, sir.

4 A Yes.

5 Q In introducing your bill, was your primary
6 concern that those companies were victimizing or at least
7 you explained it to me-- victimizing poor people?

8 A Black people and Brown people were being
9 victimized by dental laboratories. I introduced, along
10 with Representative Don Caviness of Austin, a piece of
11 legislation that would make it impossible for a dentist--
12 a dental laboratory to operate without a dentist. The
13 bill was not passed. It was defeated in the Senate and
14 it is still possible for this to exist in Texas or in
15 Harris County and these operations still continue now.

16 Q Is it your testimony after questioning by
17 Judge Justice that legislation you have introduced
18 relating to race, although you have not given examples
19 at this point, are met with heavy opposition from White
20 legislators?

21 A They are met with heavy opposition by
22 White legislators.

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Q Are there any other examples that you bring to mind at this point, other than the two that you mentioned?

A Well, the issues are not that clearcut. And, many times it might be an amendment to a bill that has definite racial overtones that if the passage -- if my amendment passes, it would definitely affect a certain area. For instance, in 1967 I introduced an amendment to raise the minimum unemployment compensation and they were interested with raising the maximum of the State unemployment and the people on the lower end of the economic scale, mainly the Blacks and browns, are more worried with raising the minimum. My amendment passed by one vote, and that was possibly one of the hottest issues that came up for, I guess, a two-month period in the House.

MR. WERG: That is all.

JUDGE GOLDBERG: In your opinion, would the Senatorial redistricting hurt, help or handicap Senator Jordan?

A It would just about make it impossible for Senator Jordan to be elected to her own seat. I think she has testified to that in a deposition; she could not be reelected.

JUDGE GOLDBERG: And that is your opinion,

yes?

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A. Right. Well, it paired her with another Senator, sitting Senator, is the first thing it did. And, secondly, it diluted the white vote.

JUDGE GOLDNERG: Is there anything further?

MR. BERG: Nothing further, Your Honor.

MR. CURRY: We would like to clear up one thing, Your Honor.

CROSS EXAMINATIONQuestions by Mr. CURRY:

Q The dental bill you referred to, Mr. Graves, you indicated it was defeated in the Senate?

A No. It was diluted in the Senate.

Q Was it passed in the House?

A It was passed in the House.

MR. CURRY: Thank you.

JUDGE GOLDNERG: Anything further?

MR. BERG: Nothing further.

JUDGE JUSTICE: May I ask how many more witnesses --

MR. BERG: Just one, Your Honor. We can finish in 15 minutes.

JUDGE JUSTICE: There is one other thing I want to bring up. The Court has entered an Order

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requiring the parties on each side to deposit the sum of \$5,000 as advance Court costs; now, I am informed by the Clerk that this has not been done. When are the Plaintiffs going to deposit that money -- referring to the entire lawsuit and not just the Houston lawsuit, the four causes.

MR. HUNG: Excuse me, Your Honor. Mr. Richards was coordinating that, and we have no idea at what stage it is.

JUDGE JUSTICE: Would you bring it to his attention, that the Court is making very pointed inquiries of that?

MR. HUNG: Yes, sir.

JUDGE JUSTICE: What about the Defendants-- and I say "Defendants" and not just the State of Texas, but also including the State Democratic Executive Committee and members thereof?

MR. McRAUL: I speak only for the State, of course, Your Honor, I have explained the problem to you before, and we have not solved it yet. That is all I can say about it.

JUDGE JUSTICE: Is Mr. Lamm present? Perhaps you can tell us about the Democratic Executive Committee.

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MR. LUNA: We have not yet located the available funds, Your Honor, but we are working on it.

JUDGE JUSTICE: How soon do you think you will be able to give us an answer to this?

MR. LUNA: Hopefully tomorrow, but frankly, a great deal of our hopes and future is tied to the State's ability to come up with some money.

JUDGE JUSTICE: Of course, I realize that you have problems among yourselves, but we are primarily concerned with getting the money into the till of the Court.

MR. LUNA: I understand.

JUDGE JUSTICE: Can you report to us tomorrow?

MR. LUNA: I can report to you. I don't know if the Court is aware that the Democratic party is in --

JUDGE JUSTICE: It might be that we will have to get out an execution on some of you.

MR. BERG: May I proceed?

JUDGE GOLDBERG: If you have one more witness, let's go ahead and finish.

FRANCIS FARNETHOLD**142**

a witness called by the Plaintiffs, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION**Questions by Mr. Burr:**

Q Would you state your name, for the record, please?

A Francis Farnethold.

Q You are an elected representative, are you not?

A Yes, sir.

Q Of the State of Texas?

A Yes.

Q What district?

A Bexars. I am one of four members representing Bexars, Kleberg Counties.

Q How long have you held that position?

A I was elected in November of 1958.

Q As a representative and concerned legislator, you were interested in the district being drawn in Harris County -- for Harris County, were you not, by the Senatorial Redistricting Board?

1 Direct Examination - Parenthold

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2 A I was concerned with the entire redistricting
3 case.

4 Q Would you state to the Court, did you
5 initiate some correspondence concerning the -- when the
6 maps would be drawn and when the Board hearing would be
7 held to the various members of the Board?

8 A Yes, I did. I was concerned, because there
9 was a 90 day limitation under the Constitution as to when
10 the Legislative Redistricting Board could be organized. So,
11 I wrote on August 2nd each member of the Restricting Board
12 asking them when they planned to meet under this Constitu-
13 tional restriction, would the meetings be open and were
14 there funds -- had there been funds appropriated? I don't
15 recall, but approximately on the 3th, I had correspondence
16 from most of them saying that there had not been any
17 meeting to that time and most of them expressed a concern
18 that the meetings be open and this was left at that. And,
19 I think then the Redistricting Board was called for a public
20 hearing, I believe, on August 24th.

21 Q And you attended, I believe, some of those
22 meetings, did you not?

23 A Yes. I attended the first one. And, was
24 in communication, rather than correspondence, I would say,
25 with several members of that Redistricting Board from

Direct Examination - FARENTHOLD

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that time forward.

Q Was Gus Mutscher one of those members?

A Yes, he was.

Q Representative Farenthold, did you, at some time prior to the drawing of Plaintiffs' Exhibit 11, the Board Districts, did you at some time have occasion to go to Gus Mutscher and discuss when those plans would be drawn or not?

A As best I can tell, because I haven't been able to find any names that I wrote. But, I saw the speaker approximately two or three times during the summer and up to September 27, so we spoke on this subject either September 27th or prior to that -- but no later than September 27th.

Q Did one of those conversations touch on the motivation for the delay in drawing the Harris County Districts -- let me restate that. Did you discuss with Mr. Mutscher any commitments that had been made concerning the drawing of Senatorial District in Harris County or not?

A Let me put it this way, he volunteered information that I am now going to relate, because I had specifically gone in on another subject. But, this matter of redistricting came up and he volunteered the following information, and that was that the Lieutenant

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Governor had conflicting commitments to Senator Jordan and to the Houston Chronicle, and the Speaker did not know how they would be resolved. I have a very clear impression of it, because I remember being struck with the fact that the Houston Chronicle was considered an entity.

Q That had to be listened to in drawing maps?

A It was very clear in my mind for that reason, that that expression was used.

Q Did you ever express your concern, after receiving this information, over the commitments -- or the conflicting commitment between Senator Jordan and the Houston Chronicle to another member of the Commission, Robert Armstrong?

A I cannot pinpoint the date, because as the Commissioner said, we had numerous conversations and we were on a TV program one time together after September 27th, but I do remember asking him if there was any substance to the statement that I had been given, and he said, "Yes," and he went on into detail, and I simply do not remember that. I took notes on it and I cannot find my notes. So, the substance of what he said, after he said there was validity to what I had repeated, I cannot tell you now.

Q Do you recall, or was it your impression,

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that he was agreeing that there was substance to these --

A That is right. I thought it was an unusual statement that I had heard from the Speaker and I wanted to find out more about it.

Q Do you remember if he stated how he knew that -- how Armstrong knew that?

A No.

Q Did he mention Everett Collier to you in that discussion?

A He did, because at the time I really wasn't aware of Mr. Collier.

Q And, did he discuss Collier's involvement or do you recall that?

A No.

Q He didn't discuss it with you, or you don't remember?

A No, I don't remember. I just remember when I repeated the substance of the Speaker's statement he started discussing Mr. Collier.

Q Are you familiar with the new Senatorial District, District 11?

A No.

Q You are not familiar with it?

A No, I am not.

1 Direct Examination - Foresthoid

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2 Q All right.

3 MR. BERG: We have no further questions
4 at this time.

5 MR. CURRY: We have no further questions,
6 Your Honor.

7 JUDGE GOLDBERG: During the conversations
8 to which you refer, was ethnicity or the core
9 part of the City the subject of any discussions
10 between you and any of the parties that you have
11 just mentioned?

12 A Not insofar as my conversation with the
13 Speaker. I have a recollection that when I spoke to
14 Commissioner Armstrong, he said something about 30,000
15 Blacks being pulled out of that Senatorial District.

16 JUDGE GOLDBERG: Thank you very much.

17 MR. BERG: We have nothing further.

18 JUDGE GOLDBERG: Are there any further
19 questions?

20 MR. CURRY: No, sir.

21 JUDGE GOLDBERG: The witness may be
22 excused. We will stand recessed until 1:35 P.M.

23 (At which time Court was recessed).
24
25

JUDGE JUSTICE: Please be seated.

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JUDGE GOLDBERG: Has the Plaintiff

rested in this case?

MR. BERG: No, Your Honor, we haven't.

We have just a very little additional testimony we would like to present, and since the structure hasn't been rigid, we are confused on depositions.

I would like to point out to the Court that we have the deposition, an advance copy of the deposition of Everett Collier and—.

JUDGE JUSTICE: I might state for the record so that the other Judges on the Court may know what has transpired, that it was agreed that all depositions could be considered whether they were actually offered in evidence formally or not, and that the parties were, if they felt any particular portion of a deposition was extremely relevant to their case, they were going to summarize it.

MR. BERG: That's what I would like to do quickly right now. In addition, I have got the deposition of Robert Spellings, the Administrative Assistant to Ben Barnes. We

1 don't want, of course, to be limited to our
2 summaries. 14

3 JUDGE GOLDENBERG: We understand.

4 MR. BENG: Now, on Page 19 of Everett
5 Collier's deposition, the original of which
6 is on its way to Court, we would like to
7 call attention to Lines -- starting at Page
8 18 -- Line 25, through Page 7 (sic) of the
9 next page, 19, and the summary of that is
10 that in asking Mr. Collier whether or not
11 he agreed with Searcy Bracewell's plan,
12 which he had seen, for the senatorial dis-
13 tricts, Mr. Collier said he thought it was
14 a good plan and that it followed the purposes
15 the Chronicle stood for if they were legal.

16 Robert Spellings' testimony was elicited
17 at Page 122 that Mr. Bracewell submitted a
18 plan that he received and used in drawing --
19 the question:

20 "Did Mr. Bracewell submit a plan?"

21 Answer: "Well, Mr. Bracewell brought
22 me a copy of the plan, the Houston Chamber
23 of Commerce plan."

24 And we would like to call particular
25 attention to those two matters.

JUDGE GOLDBERG: Thank you very much.

Anything else?

MR. BELKIN: Yes, Your Honor. We would like to recall Professor Murray for two or three questions and also in Mr. Spellings' deposition -- and we will furnish the Court with the page and line -- there is also testimony by Mr. Spellings, we want to point out, which is that he had the Houston Chamber of Commerce plan before him when he drew what became the law.

If we could, we would like to call Professor Murray for a couple of questions.

MR. McDANIEL: Perhaps it is appropriate at this time to say we do not agree with Counsel's last statement in summary of the deposition.

JUDGE GOLDBERG: We will read the deposition and do our best to understand it.

MR. McDANIEL: Thank you, Your Honor.

MR. BELKIN: May the record reflect also, Your Honor, that the Houston Chamber of Commerce plan that we have been talking about with respect to the depositions is Plaintiffs' Exhibit 21.

RICHARD W. MURRAY,

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1
2
3 a witness recalled by the Plaintiffs, having been pre-
4 viously duly cautioned and sworn to testify the truth,
5 the whole truth and nothing but the truth, resumed the
6 stand and testified further as follows:

DIRECT EXAMINATIONBY MR. WELKIN:

12 Q Professor Murray, a review of Mr. Spellings'
13 deposition will indicate that Mr. Spellings testified that
14 he drew the Texas Senate redistricting map in a total of
15 three hours, excluding urban areas, and he will further
16 testify -- or he further testified that he drew the urban
17 areas in a total of approximately a day and a half.

18 Now, based upon your experience with deal-
19 ing with census tracts and attempting to coordinate those
20 with respect to drawing of lines that satisfy one-man one-
21 vote, in addition to all the other considerations, such as
22 core concept and contiguity and compactness, would you
23 say that that is a physical possibility?

24 A Not without working from some prior working
25 plan. Actually, you would have to have at least a pretty

DIRECT EXAMINATION - Murray

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good outline of what you were going to do. If you start from scratch, just to deal with Harris County, to get the mathematical equality required in districts, it is going to take several hours, and that would just be by random association of districts that touch each other, but if you drew a plan in, oh, say, a half day, probably you would almost certainly have to be working from some guidelines that were pretty specific as to what you want to accomplish, and I think every districter who doesn't use something like the computer formula for locating supermarkets starts with some idea of what he wants to achieve.

JUDGE COLASANO: Is this an Einsteinian or a non-Einsteinian answer?

THE WITNESS: Non.

Q And it is also your testimony with respect to the districts that touch upon the core that you have examined in Plaintiffs' Exhibit 21, which is the Houston Chamber of Commerce's plan, there is a marked similarity between that and what became the law?

A I think the statistical probability of these two plans being unconnected is virtually nil.

JUDGE COLASANO: Being what?

THE WITNESS: That these two plans are not -- that one did not influence the other,

1 DIRECT EXAMINATION - Murray 100

2 that there is some causal relation between
3 the Chamber of Commerce plan and the Board's
4 plan. The similarities are so great that I
5 don't think you could leave it to chance
6 that they simply emerged that way.

7 MR. WELKIN: Thank you. We have nothing
8 further.

9 JUDGE GOLDBERG: The Plaintiff rests?

10 JUDGE JUSTICE: Is there cross-examination?

11 JUDGE GOLDBERG: Oh, excuse me.

12
13 CROSS-EXAMINATION

14
15 BY MR. CURRY:

16
17 Q Mr. Murray, I believe you indicated that the
18 ability to reduce it to a map would primarily depend upon
19 the experience and background of the individual working
20 with supplementary data.

21 Are you familiar with how long Mr. Spellings
22 worked on the supplementary data at an earlier date?

23 A No.

24 Q Were you informed that Mr. Spellings spent
25 a great deal of time during the session working on a plan?

CROSS-EXAMINATION - MURPHY

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Q And No.

MR. HELKIN: The deposition will speak for itself, I believe. We object to that characterization.

JUDGE JUSTICE: Any farther testimony?

MR. HELKIN: Your Honor, I am not sure I understand the procedure here. We still have two exhibits that objections have been lodged against, and I don't understand if all exhibits are coming in subject to objection, or do we simply have to tender those?

JUDGE COLLEMAN: Let the exhibit be tendered and let the objections be made either in writing or now, whichever you prefer.

MR. HELKIN: All right, then we will tender Plaintiffs' No. 5 and No. 6, which will be proceedings before the Legislative Redistricting Board on two separate days, and these proceedings are concerned with senate redistricting.

JUDGE JUSTICE: Now, what do these proceedings relate to? I don't understand. Are they verbatim transcripts of what occurred?

1 MR. HELKIN: Yes, that is correct. 100

2 JUDGE JUSTICE: What are the exhibits
3 that you are referring to, what numbers?

4 MR. HELKIN: Five and six, Your Honor.

5 MR. CURRY: May it please the Court,
6 we have this problem. Certainly, as far
7 what was testified to before the Redistrict-
8 ing Board we would have no objection to its
9 use for the purpose of showing what was
10 said.

11 A multitude of people testified. They
12 were not under cross-examination. Certainly
13 we didn't have an opportunity to cross-
14 examine them, so it is basically hearsay.

15 We would limit our objection to it
16 being considered for the proof of the facts
17 stated therein, but we have no objection for
18 the purpose of showing what was said.

19 JUDGE JUSTICE: All right.

20 MR. HELKIN: Plaintiff rests, Your
21 Honor.

22 JUDGE JUSTICE: Is the Defendant ready
23 to proceed?

24 MR. JANOWSKI: May it please the Court,
25 we mentioned to Judge Justice the other day

that we were filing Motions to Dismiss, and these motions have been filed. We simply want to call the Court's attention that they are pending. If the Court desires, we are prepared to argue them at any time. It is our feeling under the testimony today produced our motion is good. The Court would prefer, I assume, for us to go ahead and introduce what we have, and then at some appropriate time the Court will hear argument.

JUDGE JUSTICE: Yes, we can carry the motion along.

JUDGE GOLDENBERG: We will carry the motion along until we complete testimony, right?

JUDGE WOOD: That's right.

MR. JAMORSKI: Thank you.

DEFENDANTS' CASE IN REPLY

MR. CUNNEY: May it please the Court, the Defendants at this time offer -- well, I will call the attention of Plaintiffs' Counsel to the fact that we followed the form of order,

and it says that the exhibits that we have listed here may be received in evidence and marked as herein indicated. I don't know whether they are aware of that, but they are apparently already received in evidence.

At this time we do offer in evidence exhibits -- these will be Defendants' Exhibits H-3, 4, 5, 6, 34 and 35. I will identify these for the Court's purposes.

JUDGE JUSTICE: Well, now, have objections been lodged to these particular exhibits?

MR. CURRY: Yes, sir. These are the only ones objected to.

JUDGE JUSTICE: All right.

MR. CURRY: Defendants' Exhibit H-3 is the Senate Resolution and Apportionment Map that was referred to earlier as being the resolution that Barbara Jordan made in the Senate. It is objected to.

(No omission here.)

1 JUDGE GOLDBERG: What is the basis
2 of the objection?

3 MR. NELKIN: Your Honor, as I indicated
4 earlier with respect to the map which Mr. Graves
5 submitted, we feel that the only relevant map
6 would be the one which is under attack, as well
7 as the one that we proposed, as well as the one
8 that bears a marked similarity, in our view of
9 the case, to the one that became law and we
10 see no relevance to the various proposals of
11 other persons suggested to the Legislative
12 Redistricting Board, enact as law, so we object
13 to all of those on this ground.

14 JUDGE GOLDBERG: It will be received
15 under the same ruling.

16 MR. CUNRY: Your Honor, I assume -- I
17 didn't develop it at the time, but basically,
18 H-4, H-5, H-6 are, in effect, substantially
19 the same. They are, in effect, proposed plans.

20 JUDGE JUSTICE: The same objection is
21 made, I presume?

22 MR. NELKIN: Yes, sir, Your Honor.

23 MR. CUNRY: Exhibits 34 and 35, Your
24 Honor, the Defendants offered -- this is H-34
25 and H-35, these are compilations of the black

1 population in District 11 which was Senator
2 Jordan's district for 1966 and for 19 -- the
3 new District 11, and the Plaintiffs reserve
4 objection to these, based upon accuracy. Is
5 that correct?

6 MR. NELKIN: Yes, Your Honor. We
7 have never seen these and we would just like
8 an opportunity---.

9 JUDGE GOLDBERG: Yes, sir. And
10 advise us in what respect you deem them
11 inaccurate before we enter them.

12 MR. NELKIN: Yes, sir.

13 MR. CUNRY: At this time, Your
14 Honor, we would propose to summarize the
15 deposition of Crawford Martin, Attorney
16 General, who was, as the deposition reflects,
17 a member under the Constitution of the Redistricting
18 Board and I will simply generally
19 summarize it and designate portions of it.

20 Attorney General Martin testified
21 as to his personal background.

22 He testified as to the fact that
23 the Board had several public meetings.

24 He testified that his instructions
25 and his efforts were designed primarily,

1 following the Chavez case, with a view to
2 assuring the one-man one-vote rule and also
3 within the framework of the constitutional
4 requirements under those cases.

5 He testified there were any number
6 of maps prepared under this program of putting
7 together a final map with variations in order
8 to assure the deviations were the minimum.

9 He testified that the guideline
10 was without regard to race or color; that
11 the guideline was the one-man one-rule and
12 that there was never anything discussed or
13 no intention that anything he planned to
14 dilute or minimize or cancel out the vote of
15 a black person or any minority group.

16 He testified that in his opinion,
17 having worked on this plan with the other
18 members of the Board, that he came to the
19 conclusion that this plan was fair and in
20 his opinion did not cancel, minimize or
21 dilute the vote of the blacks in Harris County.

22 At this time we would offer into
23 evidence those portions of Attorney General's
24 deposition beginning at Pages -- Page 6 through
25 11, Page 105 through 113.

1 JUDGE JUSTICE: Actually, Counsel, 16
2 you are just giving us the portions you want
3 to emphasize because the entire deposition
4 is already in evidence.

5 MR. CURRY: Very good. That eliminates
6 the problem I was confronted with, because we
7 had not had an opportunity to do all of this.

8 Then under those circumstances, I
9 would then propose to summarize the deposition
10 of Lt. Governor Ben Barnes.

11 The Lt. Governor testified, of course,
12 about his background;

13 That the Committee was required to
14 come up with a plan;

15 That there were any number of plans
16 proposed;

17 That there were any number of plans
18 that they actually jiggered around trying to
19 come up with the one-man one-vote requirement;

20 That all of the members of the Board
21 were attempting to cooperate and come up with
22 various plans;

23 That they worked with the Legislative
24 Council;

25 That there again, they did not take

1 into accept racial numbers in order to come 162
2 up with a plan. That they strictly avoided
3 that. It was primarily the one-man one-vote
4 rule;

5 Other factors entered into it in terms
6 of compactness, community of interest and things
7 of this nature.

8 And I might point out that each of
9 these men testified that you have got a prob-
10 lem when you get this idea of calling a line
11 torture. All of them observed that there
12 seemed to not be any rational basis for the
13 rate of census tracts. And, of course, no
14 one controls the number of persons within
15 those tracts, and the number of persons and
16 the shape of the census tract ultimately
17 control the shape of the district because it
18 is a one-man one-vote type of plan.

19 He testified, of course, that they
20 had to allow on the Attorney General's Office
21 for determination, in his opinion, whether or
22 not any plan or whatever plan they were con-
23 sidering was constitutional within those
24 frameworks.

25 He testified that there was never

1 anything done intentionally for the purposes 16
2 of diluting or minimizing the vote of any
3 minority group, and specifically the blacks
4 in Harris County.

5 He testified that in his opinion
6 the plan, as adopted, was fair to all con-
7 cerned.

8 He did observe, and I would observe
9 to the Court that nearly everybody observed
10 that almost an infinite number of plans could
11 be arrived at if you just simply took down
12 the terms of numbers. But that it was designed
13 to satisfy the requirements of the Chaves case
14 and the Constitution as counseled by the
15 Attorney General.

16 In his opinion it did not dilute,
17 minimize or cancel the vote of the minority
18 people in Harris County.

19 I believe that that suffices on
20 that.

21 And with the Court's permission,
22 I would request that Mr. McDaniel then
23 proceed on some of the other depositions.
24 We did not participate in each one.

25 (No omission here.)

1 JUDGE JUSTICE: Let me stop and ask
2 ask you, does the Plaintiff desire to call
3 attention to any facet in these depositions
4 that have been summarized by Defendants' counsel?

5 MR. MELKIN: Your Honor, we thought that
6 between the Defendants' summary of the deposi-
7 tion, if you are going to read the deposition,
8 there is no reason for us to --

9 JUDGE JUSTICE: All right.

10 MR. McDANIEL: Also, presuming the Court
11 is going to read all of these depositions that
12 have been taken, and the only one that I wish to
13 make any particular allusion to is Mr. Bob
14 Spelling's Deposition. I refer to that
15 deposition because it shows, as do the others,
16 that Mr. Spelling, who is Mr. Barnes'
17 administrative assistant, or his Executive
18 Assistant, as he is called, actually drew the
19 Senate Districts in Houston, as well as the
20 Senatorial map. His deposition will show
21 pretty well how it was done and why it was
22 done.

23 I would emphasize particularly
24 a few facets of the deposition. On page
25 125 of the testimony concerning the

percentages that had been checked
to see what the Black percentage of
Senator Jordan's old district, under
the 1970 census, it was 39.8 percent
and the new Senatorial District 11
was 39.9 percent.

His testimony on page
151 and 152 of the deposition where
he was questioned about whether or not
he had in his drawing of the thing
considered a core concept and his
testimony was that the innermost part
of the City of Houston consisted of
around 900,000 people. And that that
was the core, that he did not agree that
he had divided the centermost part of the
City from the rest of it and goes on to
testify that in his opinion three core
districts were created.

Page 132, the directions
under which he worked:

Question: "All right. What was your
primary consideration other than the one man-one vote?"

Answer: "Okay, with regard to Harris County,
I think the next consideration was to draw the lines from

1 the middle out.

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2 Question: "All right. But again, --

3 Answer: "And the next consideration was
4 to try to avoid as much as possible any dilution of
5 the Blacks."

6 We tender all of these depositions
7 and as the Court has already indicated,
8 to be read and considered for what they
9 are worth. Thank you.

10 MR. CERRY: State rests, Your Honor.

11 JUDGE GOLDBERG: Does the Plaintiff
12 have anything further?

13 MR. MELKIN: We have nothing further,
14 Your Honor.

15 JUDGE GOLDBERG: The case will be
16 closed.

17 JUDGE JUSTICE: Before we proceed
18 with the rest of the cases, I want to bring
19 to your attention a matter that has been
20 of intimate concern to the Court Reporters.
21 As you know, they are doing a daily copy
22 called for for each of the members of the
23 Court.

24 The Court Reporters have not
25 been informed as to how many -- whether anyone

1 else wants daily copy. If so, they
2 request that you -- the Court Reporters,
3 that they be notified at the next recess.

4 Now, the Court is ready to
5 proceed with the remaining of the cases.
6 I notice that some of the attorneys are
7 not present. Are they in the anteroom?
8 Would the Marshal call for all attorneys
9 to come into the Courtroom?

10 MR. NELKIN: Might I inquire as to
11 the schedule of arguments? Will the
12 case be argued, and if so, will it be at
13 the close of all cases?

14 JUDGE JUSTICE: It is the wish of the
15 Court that the arguments be considered all
16 at one time.

17 JUDGE GOLDBERG: One can be used for
18 the other and if that can be done, maybe
19 the arguments can correlate.

20 MR. NELKIN: May we be excused then,
21 until the time of arguments?

22 JUDGE GOLDBERG: Certainly. Be sure
23 to keep in touch with the Court as to when
24 that might come about. Hopefully, soon.

25 MR. CURRY: I believe Mr. Luna is

absent.

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SENATOR MAURY: Your Honor, Mr. Richards is on his way from the Capitol Building. We are marking exhibits pursuant to the pretrial order of yesterday afternoon. I think he can be reached by telephone very quickly.

JUDGE JUSTICE: I wanted to announce on behalf of the Court the procedure under which we intend to follow for the remainder of the cases and I assumed all counsel would be present. Since you are here, Senator Maury, you can relay this.

It is the desire of the Court that all of the remainder of the cases be considered together, and that we operate under this procedure;

That we have first the various claims made by the Blacks;

Secondly, the claims made by the Mexican-Americans;

and Thirdly; those of the Republicans.

I believe that takes care of the so-called minority groups. Is there

any objection to that procedure?

100

After all of the evidence in behalf of these various groups, is in, of course, we would expect that the Defendant would present his case. Is there any particular objection to this procedure?

MR. ARMSTRONG: For a point of clarification, if I may --

JUDGE JUSTICE: Yes, sir.

MR. ARMSTRONG: Do I understand that you will take evidence from the Plaintiff on the Blacks, the Mexican-Americans and the Republicans before the Defendants offer evidence on either of the three?

JUDGE JUSTICE: Yes, sir.

JUDGE GOLDBERG: Unless there be objections to this.

MR. ARMSTRONG: I have no objection.

JUDGE JUSTICE: Is there an objection from any of the Plaintiffs or from the Defendants?

JUDGE GOLDBERG: Do you think if we took a 10 minute recess we could all be ready to go, or what is the situation?

SENATOR MAHONEY: I will certainly try.

1 Your Honor, to reach Mr. Richards

2 right now.

3 JUDGE JUSTICE: I think Mr. Lane
4 would be a very interested party in this,
5 too.

6 MR. CUREY: Yes, and I don't see him,
7 Your Honor.

8 MR. ARMSTRONG: Perhaps in 10 minutes
9 we can find him.

10 JUDGE GOLDBERG: Let's take a 10
11 minute recess.

12 (At which time there was a short
13 recess).

JUDGE JUSTICE: Please be seated.

17A

At the Pretrial Hearing in this case the Court was informed that the Plaintiffs' case with reference to the Houston Division case would take approximately two days.

Upon further urging from the Court, it was decided that the case could be concluded in one day. The Plaintiffs in the remainder of the cases, I think justifiably, considered that it would take at least one day to conclude the Houston case.

I am informed -- the Court is informed that the Plaintiffs in the other cases are not at this time ready to proceed.

Are we correct in that?

MR. MAUEY: That's correct.

MR. RICHARDS: Yes, sir.

JUDGE JUSTICE: Would you be ready to proceed at 9:00 o'clock in the morning?

MR. RICHARDS: Yes, sir.

MR. MAUEY: Yes, sir.

JUDGE JUSTICE: How long, for the record, do you think it will take to conclude the Plaintiffs' entire presentation?

MR. RICHARDS: From Dallas and San Antonio,

1 and I guess I better watch myself. I'm not 174
2 sure how many San Antonio witnesses will be
3 called. I would think a day and a half at
4 the outside for all of it, a day or less
5 than a day for Dallas.

6 Mr. Idar, I suppose—.

7 MR. IDAR: I'm not sure that I will take
8 a day and a half, Your Honor. I think I can
9 probably do it in less than a day.

10 JUDGE JUSTICE: You are speaking about
11 the Mexican-American case?

12 MR. IDAR: Yes, sir.

13 JUDGE JUSTICE: Well, let's do it on
14 this basis.

15 How long do you think it will take to
16 put on the black's case?

17 MR. RICHARDS: The Dallas case that we
18 put on should not require more than a day
19 unless something goes down.

20 JUDGE JUSTICE: You are speaking about
21 the blacks now?

22 MR. RICHARDS: The Dallas County case
23 which is focusing on the blacks.

24 JUDGE JUSTICE: All right.

25 JUDGE GOLDBERG: What about Tyler?

1 MR. RICHARDS: I'm sorry. We have used
2 the Dallas County in shorthand reference.
3 That is really the Tyler case, Your Honor.
4 That is Dallas and Tyler, all of our case---.

5 JUDGE JUSTICE: Well, now, we are speak-
6 ing about all of the cases in their entirety.
7 How long do you think it will take to
8 put on the case with reference to the blacks?

9 MR. RICHARDS: I think less than a day.

10 JUDGE GOLDBERG: Wonderful.

11 JUDGE JUSTICE: What about the Mexican-
12 Americans?

13 MR. IDAR: Less than a day, Your Honor.

14 JUDGE JUSTICE: Then we have the Republi-
15 cans. How long---?

16 MR. CROUCH: Half a day at most, Your
17 Honor.

18 JUDGE JUSTICE: And what do you say---?

19 MR. EASON: Well, this is San Antonio
20 Senate Republicans. Less than half a day,
21 Your Honor.

22 JUDGE JUSTICE: I had thought that the
23 Republicans were going to concentrate their
24 efforts. Aren't you?

25 MR. CROUCH: Yes, Your Honor, we will as

1 much as possible. The San Antonio Republicans
2 did raise an additional issue about the reappor- 174
3 tionment for the Senate, which the Republican
4 Intervenor from the Dallas and Tyler case
5 only questioned the House Reapportionment Bill.

6 JUDGE GOLDBERG: Well, how many were here
7 this morning when I made the initial statement?

8
9 (REPORTER'S NOTE: Indication was
10 received from the courtroom.)

11
12 JUDGE GOLDBERG: Well, I am going to
13 try again. I hate to be repetitious and bor-
14 ing.

15 I implore all of you to cooperate to every
16 extent possible to expedite the termination of
17 this case, because we are in a critical time
18 factor. As I said this morning, there is no
19 pre-judgment on the part of any Judge on this
20 bench. We will listen, read the depositions,
21 and give this case careful study. It is
22 impossible to conclude but that at the end of
23 this case when we come to judgment somebody
24 -- somebody, somewhere is going to be disap-
25 pointed and aggrieved, and we all feel that

1 that party, whoever he might be, must have 175
2 ample opportunity to go upstairs where our
3 correctors live in order that whatever is
4 done can be set aside by the higher authority.

5 Now, to do that, we are going to have to
6 have the utmost cooperation, and I implore
7 all of you to do that, keeping it in mind,
8 and we start tomorrow morning at 9:00 o'clock.
9 We don't want to work anybody at night. I
10 think it is an imposition on everybody. We
11 appreciate the cooperation you have given Judge
12 Justice in getting this case to the present
13 status. We appreciate it, but we must keep
14 on as fast as we can, because we have got a
15 lot of reading and a lot of work and a lot
16 of thinking to do. We ask you to help us.

17 Let's start tomorrow morning---.

18
19 (REPORTER'S NOTE: The Court here
20 confer out of the hearing of the
21 court reporter.)

22
23 JUDGE GOLDBERG: Oh, and Judge Justice
24 suggested -- Defendants, do you have any
25 idea how long it will take you, or will that

depend on---?

MR. McDANIEL: Your Honor, we have divided the efforts somewhat much as the Plaintiffs have done. I would anticipate that our evidence on the San Antonio matters will probably take a half day. It may be a longer estimate than warranted.

Before Mr. Luna gets up to give you an estimate on the Dallas situation, we took nine depositions here in Austin last week. Signatures were not waived on them. The Defendants -- and I speak for both Defendants now -- are willing to waive signatures on them and file them at this time so the Court can have something to spend its time on, if it is all right with the Plaintiffs.

JUDGE GOLDBERG: Is that satisfactory with everybody?

MR. RICHARDS: Yes.

JUDGE JUSTICE: They will be received in evidence.

JUDGE GOLDBERG: Now, Mr. Luna, do you---?

MR. LUNA: Yes, Your Honor, please the Court, on the matter of the depositions, we took depositions in Dallas this past week,

1 and all of the attorneys who were there, and 1
2 there was somebody there representing each
3 group, and we agreed to waive signatures on
4 those depositions unless somebody objects,
5 and if there is an objection, we need to know
6 it so we can find the witness. We have
7 that agreement on those depositions.

8 JUDGE JUSTICE: Have they been tran-
9 scribed?

10 MR. LUNA: Sir?

11 JUDGE JUSTICE: Have they been tran-
12 scribed?

13 MR. LUNA: Some of them have. Some
14 have not. There are supposed to be some on
15 the plane coming down this afternoon. We
16 anticipate that we will have them all by in
17 the morning.

18 JUDGE GOLDBERG: What about the time
19 factor?

20 MR. LUNA: On the time, we did a good
21 bit of our testimony by depositions last
22 week from the Defendants' standpoint in
23 Dallas. We took the deposition of one black
24 and one Mexican-American. We propose to
25 have in addition to the several depositions

1 that we have, not more than three witnesses, 170
2 and their testimony should not run on direct
3 examination longer than a total of 45 minutes.

4 JUDGE GOLDBERG: Thank you very much.

5 MR. RICHARDS: May we be told now who
6 those witnesses are?

7 JUDGE JUSTICE: Yes, you are entitled
8 to know.

9 MR. LUMA: Yes, we will have L. E.
10 Brown.

11 MR. STEELE: Who?

12 MR. LUMA: L. E. Brown and William E.
13 Clark, III, and I believe other than deposi-
14 tion witnesses, Your Honor, those probably
15 will be all we will have, and if we have
16 a problem getting them here, we might not
17 use those.

18 JUDGE JUSTICE: Who is Mr. L. E. Brown?

19 MR. LUMA: Mr. L. E. Brown, Your Honor,
20 is a black precinct chairman for many years.

21 JUDGE JUSTICE: I think I recognize Mr.
22 Clark.

23 MR. LUMA: Yes, sir. We intend to
24 qualify Mr. Clark as an expert. We would
25 like to also know who their witnesses are

1 from Dallas, if they would tell us.

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2 MR. RICHARDS: We have listed all our
3 witnesses in the Pretrial Order in the case.
4 If anything there will be less than---.

5 JUDGE GOLDBERG: How many are there?

6 MR. RICHARDS: We listed six, I think,
7 Your Honor, potential live witnesses, as I
8 recall, in addition to the depositions that
9 have been taken.

10 As it now stands, they would be, again
11 for the record, Rev. Ian Holmes, George Allen,
12 Emmet J. Conrad, Dan Weiser, Senator Oscar
13 Mauzy and then Dr. Clifton McClesky, who is
14 our expert, and we might seek to qualify some
15 of the others as experts in the sense of lay
16 experts.

17 JUDGE JUSTICE: Now, that takes care of
18 the State Democratic Executive Committee.
19 That is for the Dallas case and the Tyler
20 case.

21 MR. LUNA: Right, except we have one
22 more problem, Your Honor. Several of us in
23 the Tyler -- in those cases have evidence
24 that is on its way down here, and Your Honor
25 instructed us yesterday to have our exhibits

1 here and marked by 5:00 o'clock. We have 1:00
2 just been told that the plane that was bring-
3 ing some of several of the parties' evidence
4 down is iced up in Kansas City, and we don't
5 know how late it is going to be, but could
6 we have until tomorrow to have those marked?

7 JUDGE JUSTICE: All right, I guess we
8 can wait that long.

9 JUDGE GOLDBERG: Fine.

10 Anything else?

11 JUDGE JUSTICE: What about the Houston
12 case? Does that take care of all of it?

13 MR. CURRY: Your Honor, we anticipate
14 that is it.

15 JUDGE JUSTICE: That is it?

16 Where are the---? Are these the sole
17 depositions that are ready for the perusal
18 of the Court (indicating)?

19 MR. MAURY: No, Your Honor, we have a
20 couple of Dallas depositions which have
21 been transcribed that we could file with
22 Your Honor's Clerk this afternoon. They
23 are just physically not here in the court-
24 house right now.

25 JUDGE JUSTICE: I guess we could wait

1 until in the morning.

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2 JUDGE GOLDBERG: Oh, yes.

3 JUDGE JUSTICE: I think this will con-
4 stitute a good night's reading.

5 MR. LUNA: I have at least two more, if
6 you need more.

7 JUDGE JUSTICE: These are pertaining
8 to the Dallas situation?

9 MR. LUNA: Yes.

10 JUDGE JUSTICE: We will wait until
11 tomorrow.

12 MR. McDANIEL: These are depositions of
13 all five members of the Board and some of
14 the clerical help who helped with the actual
15 drawing.

16
17 (REPORTER'S NOTE: The Court here
18 confer out of the hearing of the
19 court reporter.)

20
21 JUDGE GOLDBERG: Court will stand in
22 recess until 9:00 o'clock tomorrow morning.

23 (REPORTER'S NOTE: The Court then,
24 at 2:40 o'clock, P.M., January 3,
25 1972, adjourned until January 4, 1972.)

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DAN WEISER,

a witness called by Mr. Richards, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

MR. RICHARDS: Before proceeding, may I make one further matter, Your Honor? I want to introduce and have it appear on the record, Mr. John E. Collins, of Austin, Texas, who is associated in the presentation of the case and who will, in fact, be assisting us.

JUDGE GOLDBERG: Glad to have him.

JUDGE JUSTICE: What was the name again?

MR. RICHARDS: John Edward Collins, now of Austin and formerly of San Antonio. Is that correct?

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MR. COLLINS: Yes, sir.

QUESTIONS TO MR. WEISER BY MR. RICHARDS:

Q Could you give us your full name, please?

A Dan Weiser.

Q W-e-i-s-e-r.

A Yes, sir.

Q Where do you live, Mr. Weiser?

A 3851 Rugged Circle, Dallas, Texas.

Q How long have you lived in Dallas?

A Since 1958.

Q How are you employed, Mr. Weiser?

A I am employed as a mathematician for a major oil company research laboratory.

Q What is your educational background -- your higher education?

A I received a Bachelor of Arts in Mathematics, a Master's Degree in Mathematics and a Doctor in Mathematics from Rice University.

JUDGE JUSTICE: From where?

A Rice University.

Q Briefly, what is the nature of your work with the oil company by which you are employed?

A I apply mathematical techniques to research

1 Direct Examination - Weiser

2 problems in oil findings and also in terms of economic
3 problems as well.

4 Q Are the techniques which you employ for
5 the oil company, are those same techniques applicable or
6 transferable to analysis of political returns?

7 A A number of them are. In fact, in the
8 early 60's, I was invited to attend the first of the
9 National Science Foundation sponsored seminars, entitled
10 "Mathematical Techniques of Political Science"; and these
11 were held at S.M.U.

12 Q Have you then, over a period of time,
13 employed the -- your training as a mathematician in the
14 analysis of Dallas County election returns?

15 A Yes, sir, I have.

16 Q Do you have any part-time employment or
17 moonlighting in which you are actually employed as a
18 consultant in this respect?

19 A Yes. I have been employed in the past
20 to do political analysis for candidates. Also, I was asked
21 to be a consultant by an educational television station
22 in Dallas, as well as by Southern Methodist University.

23 Q All right, sir. Independently of your
24 activities in that regard, have you been a participant
25 in politics in Dallas County?

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1 A Yes, I have.

2 Q In what way?

3 A I have been a precinct chairman on
4 several occasions.

5 Q Which party?

6 A The Democratic Party. And in 1964
7 through 1966, I was secretary of the Democratic Executive
8 Committee.

9 Q The County Democratic Executive Committee?

10 A That's right.

11 Q In addition to that, have you worked in
12 political campaigns for the candidates?

13 A Yes, sir. In the 1960 Presidential
14 campaign, first Presidential campaign, I was in charge of
15 the last three days of campaigning activities and in the
16 1964 campaign, I was in charge of the precinct campaign
17 for the Democratic Presidential Candidates.

18 Q All right, sir. Have you made any effort
19 to study and analyze Dallas County election returns?

20 A I have for --

21 Q -- over what period?

22 A For over 10 years.

23 Q Has any part of this study focused on
24 returns in the predominantly Negro precincts of the County?
25

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A Yes.

Q Over what period of time?

A I looked at those starting with the City election, actually, of 1959.

Q All right. And unstained that kind of study from 1959 down to date? Is that correct?

A Yes, I have.

Q All right. Have you prepared for us certain amounts based upon the 1970 and 1960 census data as regards Dallas County?

A Yes.

Q All right. Would you tell us what you have there -- the first one in your hand, I believe, is already identified or marked, rather, as Plaintiffs' Exhibit 1?

A Yes. That's correct. This is a Dallas County census tract map prepared by the Texas Legislative Council, and on it I have shaded in red from the census information of 1960, all those tracts which are over 50 percent non-white. This was the classification in 1960 census. And in orange I have shaded all of the tracts that are over 50 percent Negro in the 1970 census. And these include all those shaded in red. That is every tract that was over 50 percent non-white in 1960 is now over 50 percent Negro in 1970. Now, in addition to this, there are

1 Direct Examination - Weiser

2 some lines on tracts. The red lines signify a percentage
3 between 30 and 50 percent of the non-whites in 1960 and
4 the red -- I am sorry -- the red do this and the orange
5 for 1970, and 30 to 50 percent Negro.

6 Q One question, Mr. Weiser, you have used
7 "Negro" and "non-white", I think. "Non-white, with
8 respect to 1960 and "Negro" with respect to 1970?

9 A Yes. These were the census classifica-
10 tions in Dallas County. There are very few Orientals
11 or Indians in the non-white category, so for all practical
12 purposes, the non-white category would be the Negro
13 category for 1960.

14 Q Then if I understand Plaintiffs' Exhibit
15 1, if one looks at the totally shaded parts, they reflect,
16 taking together the red and the orange, all precincts, or
17 rather census tracts in which the population is presently,
18 as of the 1970 census, in excess of 50 percent Negro? Is
19 that correct?

20 A That's correct.

21 Q And by contrasting the red and the orange,
22 I take it we see those areas between 1960 and 1970 that
23 have become predominantly Negro in that decade? Is that
24 correct?

25 A Yes, sir.

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Q What does it reflect in terms of the movement?

A Well, if you look at the original 1960 shading, you will see the non-white or predominantly Negro population in what is termed South Dallas, near North Dallas and West Dallas. And also, a census tract out in Grand Prairie. Now, in addition, there was a dense Negro development of Hamilton Park, which is shown at the top of the map.

Q That is up on the northeast corner? Is that correct?

A That is about north central.

Q Right.

A However, the tract boundaries were much larger than the development and therefore, it only shows up as between 30 and 50 percent.

Q What are actual facts with respect to the Hamilton Park subdivision?

A Oh, it must be close to 100 percent Negro.

Q All right. Excuse me. You were going to say something else?

A I was going to describe essentially how many -- what percent of the non-white population in 1960 was included in the shaded areas.

Direct Examination - Weiser

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JUDGE WOOD: What do you include in "non-white"? Do you have Mexican-Americans as non-whites?

A No, sir. Just the Indians, Orientals and Negro.

Q This was a census classification, is that correct, in 1960, Mr. Weiser?

A Yes, sir.

Q And the non-white category included Negro, Oriental and Indian? Is that correct?

A Yes, sir.

Q And I think as far as Dallas County is concerned, that the Negro population comprises some 98 or 99 percent of the non-whites? Is that correct?

A That's correct.

Q All right. You were going to tell us, I think, referring to shaded areas, what percent of the Black or Negro population reside in the shaded areas? What percent of Dallas County's total -- I am fumbling there -- excuse me. What can you tell us about the concentration?

A All right. In 1960, 80 percent of the Negro population included in the shaded red areas.

Q The totally shaded red areas?

A The totally shaded. That means that the other areas have not been counted. Now, by 1970 in the

1 Direct Examination - Weiser

2 orange and the red areas, 90 percent of the Negro
3 population in Dallas County is included in these shaded
4 areas.

5 Q By that, totally shaded areas, you are
6 talking about the totally shaded?

7 A Totally shaded.

8 Q That is not included in the areas in which
9 there are lines drawn? Is that correct?

10 A That's correct.

11 Q What percent of the population in the
12 shaded areas was Negro or non-white in 1960?

13 A Close to 90 percent.

14 Q And in 1970?

15 A The same. Close to 90 percent.

16 Q So, in effect, we have -- if I am correct,
17 that the shaded areas reflect at this point areas in which
18 90 percent of the population is Negro and that, in turn,
19 constitutes roughly 90 percent of the Negro population of
20 Dallas County?

21 A That's correct.

22 Q Well, at least from this analysis, do you
23 have any conclusions as to the -- whether or not there is
24 more or less housing segregation in Dallas County in 1970
25 than there was in 1960?

Direct Examination - Weiser

A After looking at this, although this is just one measure, I would say there is more housing segregation in Dallas in 1970 than there had been in 1960.

Q Now, you have a second map. Can you put it down?

JUDGE GOLDBERG: What percentage of the Negro population is there to the whole population of Dallas County?

A In terms of the County, it is close to 17 percent.

JUDGE GOLDBERG: In 1970?

A Yes, sir.

JUDGE GOLDBERG: 1960?

A It is a little less. I have that --

Q -- I think it is a little over 14.

A 14.7. Close to 15 percent.

Q While you are at it, you might tell us if you know, do you know taking the City of Dallas, as opposed to the County of Dallas, what percent of the population of the City of Dallas was Negro in 1970?

A Yes. This is more dramatic. In 1970, 24.9 percent -- almost one out of four inside the City of Dallas are Negro, but in 1960, only one out of five, 19 percent. So in other words, growth in the Negro population

1 Direct Examination - Weiser

2 as you can see here, has been within the City.

3 Q All right, sir. You have a second map.
4 I know it is somewhat more bulky -- may I approach --

5 JUDGE GOLDBERG: Go ahead.

6 Q This is Plaintiffs' Exhibit 2, Mr. Weiser,
7 and can you tell us what it is or what it reflects?

8 A Yes. This is just shading the orange and
9 red areas.

10 JUDGE GOLDBERG: Excuse me. Mr. Curry,
11 come around.

12 MR. RICHARDS: Excuse us, Mr. Curry.

1 Direct Examination - Weiser

2 Questions by Mr. Richards:

3 A In the first place, the base map is a
4 precinct map of the precincts in 1970 and the shaded
5 area is the area taken from the census tract maps of
6 the tracts that are fifty per cent Negro or more.

7 Q Do I understand basically the map too is simply
8 transferring the information of the census tracts onto
9 a precinct map of Dallas County?

10 A Yes.

11 Q So, your testimony with respect to the
12 shaded areas on map 2 would be the same as the ninety
13 per cent of the Negro population in Dallas County in the
14 shaded area, is that correct?

15 JUDGE GOLDBERG: By "precinct" do you mean
16 voting precinct?

17 MR. RICHARDS: Yes.

18 A And the little white areas that are completely
19 shaded inside the orange ones show the precinct numbers.

20 Q By looking at map 2, at least, we can
21 actually see the precinct numbers-- the voting precinct
22 numbers of those precincts which in 1970 were in the
23 category of predominantly Negro, is that correct?

24 A Yes, that is correct.

25 Q And, I take it the downtown area of Dallas,

1 D. E. - Weiser

2 at least, separates in part those two major orange chunks,
3 is that correct?

4 A Yes. That is, the white area, part of that
5 315 that is circled, the real downtown area, I guess would
6 be that part of 315 and 309 which is directly above that.
7 These are essentially, of course, low population-- very
8 low population there.

9 Q All right. Okay. I think that is all. I
10 didn't mean to involve everybody in that one.

11 JUDGE JUSTICE: Do you have some kind of
12 something we can put those maps on?

13 MR. RICHARDS: I tried to find one.

14 THE CLERK: I don't think we do.

15 MR. RICHARDS: I tried to find one before
16 we came in this morning.

17 BY MR. RICHARDS:

18
19 Q If I may approach the witness, referring
20 briefly again to your map number 1, we find a shaded
21 area in census tract number 161, is that correct--

22 A That is correct.

23 Q --At the far western point of Dallas County.
24 Can you tell us essentially what that is, if you know?
25

1 D. E. - Weiser

2 A Yes. That is-- most of the tract consists
3 of Negro housing projects in Grand Prairie.

4 Q Public housing projects?

5 A Yes, that is correct.

6 Q Now,-- And, I believe you have already
7 testified with respect to Hamilton Park, that is tract
8 66--

9 A No, it is 7802.

10 Q All right. This one big white glob here,
11 4.03, can you tell us essentially what that is?

12 A That is Love Field.

13 Q The airport area?

14 A That is the airport area.

15 Q Thank you. I think I may have asked you,
16 but have you identified those precincts which over a
17 period of time fall within the predominantly Negro areas
18 of Dallas County?

19 A Yes. Using the 1970 census tract infor-
20 mation, putting on the precinct map, you can determine
21 which precincts are predominantly Negro.

22 Q Now, of course, precinct numbers change
23 from time to time, is that correct?

24 A Yes, that is correct.

25 Q Have you traced those precincts back to
1960, the predominantly Negro or Black precincts?

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2 A Yes. But, it is a little more complicated.
3 You take the 1960 tract information and shade it on a
4 1960 map and you get the 1960 precincts and then, in
5 essence, you follow the migration of the Negro popula-
6 tion from 1960 to 1970, coloring the precincts as you go
7 along. There is some objectivity that can be applied to
8 the election of Negro precinct chairmen and just looking
9 at the housing factor.

10 Q All right. Well, you have got before you
11 copies of your Exhibits 3-- Can you tell us what Exhibit
12 3, then, is in that regard?

13 A Yes. For the years, 1970, 1968, 1966,
14 1964, 1962 and 1960 these are all of the precincts in
15 the predominantly Negro areas and it is termed "Negro
16 block".

17 Q Is that your term?

18 A That is correct.

19 Q And, by precinct, again, we mean voting
20 precincts of Dallas County?

21 A That is correct.

22 Q And, presumably applying those precinct
23 numbers to the election returns of Dallas County some
24 conclusions can be drawn with respect to the voting
25 patterns of the Negro block, is that correct?

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2 A That is correct.

3 Q And, your Exhibit 4 is what, Mr. Weiser?

4 A Exhibit 4 shows the forty-five predominantly
5 Negro tracts in 1970 with the population of each tract
6 and total. It shows--

7 Q What was the total Negro population in those
8 forty-five tracts?

9 A I am sorry. This gives a total population
10 in those tracts of almost 222,000.

11 Q All right, sir. Now, these are the same
12 tracts that appear on your maps, is that correct?

13 A Yes.

14 Q All right. And, your Exhibit 5 shows what,
15 Mr. Weiser?

16 A Exhibit 5 shows the Negro population of
17 these forty-five predominantly Negro tracts, it is set
18 out, and also the total is found to be close to 198,000,
19 which means that close to ninety per cent of the area is
20 Negro.

21 Q All right. Within the tracts-- I believe
22 this is from your testimony given before-- this sub-
23 stantiates the testimony before.

24 A In addition, the same calculations are made
25 for the twenty-four predominantly White tracts of 1960.

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2 And, in addition the population is computed, the Negro
3 population, was computed in 1970 in terms of the old
4 red and the orange. And, it turns out again that
5 approximately the same number of people still live in
6 the red area in 1970 that lived there in 1960. And, all
7 the new Negro population is shown in the orange area.
8 That is, it is not-- there aren't more people now living
9 in the red area.

10 JUDGE GOLDBERG: State that again, the
11 last.

12 A There are approximately the same number of
13 people living in the red area in 1970 that lived there
14 in 1960 so that all the new population, Negro population,
15 has moved out to the new orange areas.

16 JUDGE GOLDBERG: The orange area being
17 adjacent to the red?

18 A Yes, sir.

19 BY MR. RICHARDS:

20
21 Q What you are really saying is the density
22 of the population has not significantly increased in the
23 old tracts that are heavily Negro in 1970?

24 A Or decreased.

25 Q Or decreased, for that matter.

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2 A Right.

3 Q Now, let's see. Would you tell us about
4 what Exhibit 6 is?

5 A Exhibit 6 lists the per cent Negro in the
6 tracts, in the forty-five tracts, and also gives the
7 exact percentage of Negro in the thirty to forty-five
8 tracts, which there are five.

9 Q All right, sir. And, Exhibit 7?

10 A It does the same thing for the 1960; the
11 twenty-four predominantly nonwhite tracts.

12 Q Excuse me. Let me get a copy of that.
13 All right, sir. And, finally your Exhibit 8 is one
14 reflecting Negro registration or registration, I guess,
15 in the Negro block precincts, is that right?

16 A Yes, it does both.

17 Q Could you explain that to us?

18 A Yes. It shows the-- taking these precincts
19 and just adding up the registration.

20 Q All right. Taking those precincts, which
21 you have denominated "Negro block precincts".

22 A That is correct.

23 Q You have attempted to calculate the Negro
24 voter registration in those precincts, is that correct?

25 A Yes. Taking the records from the Tax

1 D. E. - Weiser

2 Assessor-Collector's office and adding up the number of
3 registered people in those precincts.

4 Q All right. Does it show any significant
5 increase over the period of time from 1960 to 1970?

6 A Yes. In 1960 there were about 24,000
7 people registered in those-- in this Negro block. In
8 1962 it stayed approximately the same. It just about
9 doubled in 1964.

10 Q What explains that, if you know?

11 A It is my opinion that the removal of the
12 pole tax as a requirement for registration, plus our
13 efforts, taking advantage of that, increased this to
14 almost double, to 48,000.

15 Q All right, sir.

16 A Then, since that time it has essentially
17 grown with the population, so that by 1970 there were
18 close to 83,000 people registered in the Negro block.
19 And, that accounts for close to seventeen per cent of
20 the registered in Dallas County.

21 Q So, what you are saying is that the regis-
22 tered-- they vary almost directly to the proportional
23 population in terms of that?

24 A That is correct.

25 JUDGE GOLDBERG: What deviation is there

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1 D. E. - Weiser

2 between Black and White population?

3 A Well, it would be very little, because
4 16.7 per cent of the population in the county-- I am
5 sorry, 16.6 per cent of the population canvassed Negro
6 and 16.7 per cent of the registered voters-- so it is
7 extremely close.
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1 DIRECT EXAMINATION - Weiser

2 Q All right, sir. Now, have you prepared
3 also a list of all the contested legislative races in
4 Dallas County, that is, races in the Democratic Primary
5 for the House of Representatives over a period of time?

6 A Yes, sir, I have.

7 Q What exhibit is that reflected on?

8 A This is Exhibit 9.

9 Q O. K. Have you made some attempt to analyze
10 these contested races over the last ten years?

11 A Yes.

12 Q First -- excuse me -- what does it reflect
13 in terms of the frequency of contested Democratic Primary
14 elections with respect to the House seats?

15 A Well, there weren't very many.

16 Q Essentially uncontested. Is that correct,
17 over the years?

18 A Yes, in most cases just when a new seat
19 opened up, that is, with incumbents they are pretty much
20 left alone with few exceptions.

21 Q Just as a general matter -- we have the
22 records in -- has there been any meaningful participation
23 in the Republican Primary in Dallas County over this ten-
24 year period---?

25 A No.

1 DE - Weiser Q ---with respect to numbers? 214

2 A Not compared to the number of people who
3 vote and take part in the Democratic Primary.

4 Q Dallas County continues to be in terms of
5 primary votes, at least, essentially a one-party county.
6 Is that correct?

7 A That is correct.

8 Q Have you taken in analyzing your election
9 returns -- have you taken a look to see how these pre-
10 dominantly black precincts vote in November in the General
11 Elections?

12 A Yes, I have also done that.

13 Q What does that reflect?

14 A Well, over 90 percent of the vote in
15 this block is for the Democratic candidate, the major
16 Democratic candidate. That is, if it is a Presidential
17 year for the Presidential nominee of the Democratic Party,
18 and if it is an off year, say, for the Governor -- as a
19 rule the Governor -- there are some exceptions there, but
20 for the U. S. Senate nominee.

21 Q In analyzing these returns, does it appear
22 to make any appreciable difference whether there are
23 legislative candidates on the Democratic primary ballot as
24 Democratic nominees in November who seek to appeal to the
25 residents of the black ghetto?

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1 DE - Weimer

2 (REPORTER'S NOTE: There was no
3 audible response from the witness.)

4
5 Q Do you understand my question?

6 A No.

7 Q In looking at the election returns over
8 the last ten years and the extent to which the residents
9 of the black or Negro precincts have voted Democratic,
10 does it appear to make any difference in the percentage
11 of vote for the Democratic nominee at the head of the
12 ticket, whether there are included as Democratic nominees
13 legislative candidates who make specific appeals to the
14 black ghetto residents?

15 A No, it makes no difference at all that I
16 can see whether or not candidates favorable to or of
17 interest to the Negro block are included as far as the
18 turn-out goes.

19 That is, it depends on the Presidential
20 nominee of the rest of the activity for the ticket.

21 Q All right, sir. I'm sorry, could you tell
22 us what your Exhibits 9 and 10 are so we could have them
23 at least explained on the record?

24 A Using the other exhibits, the other maps,
25 that were shaded in order to find out which precincts were

DE-Weiser
 1 in the Negro block over the years for each election, for 216
 2 each contested legislative race between 1970 and 1960, I
 3 then just added up the votes there to find out, to essen-
 4 tially split the vote up into three parts -- into two
 5 parts -- sorry -- into the Negro block, what happened to
 6 the Negro block, what happened in the remainder of the
 7 county, called the white block, and then, of course, the
 8 total county, and these are listed here in terms of the
 9 percentages for a particular candidate, and the particular
 10 candidate was chosen in each case, primarily for some
 11 order and some convenience, was the candidate who received
 12 a plurality or a majority of the Negro area; that is, the
 13 candidate who received the highest vote in the Negro block
 14 is the one whose percentage is looked at in terms of what
 15 kind of vote did he get in the Negro block, what kind of
 16 vote did he get in the white block and what happened in
 17 the total county.

Q Let's see. Have there been during this
 18 period of time that you have studied how many Negro can-
 19 didates facing contested primary races for legislative
 20 seats in the Democratic primary within the primary?

A Within the Democratic primary there was
 21 one Negro candidate in 1966 with a contest.

Q Who was that?

A Joseph Lockridge, and he faced two white

DE-Waizer
 1 candidates, Ben Lewis and Mrs. Jean Ball, and then in 217
 2 the 1970 Democratic Primary there was again a Negro
 3 candidate, Berland Brashers.

Q Can you spell that for the reporter?

A The first name is B-e-r-l-a-i-s-a-d, and
 6 the second name is B-r-a-s-h-e-r-s.

REPORTER: Thank you.

Q Has there been one other contested race
 9 involving a Negro candidate in Dallas County, special
 10 election race?

A Yes, there has been a -- well, there have
 12 been two.

Q Two?

A Two special election races, one in the
 15 early sixties, which was the special election, November
 16 9, 1963, where L. A. Bedford ran against 14 others.

Q Bedford was a Negro?

A Bedford was a Negro.

Q All right.

A And also there was a special election
 21 in June of 1968, June 18, 1968, and Representative Ian
 22 Holmes ran against -- the records are not available as
 23 to how many others.

Q A large field of candidates?

A A large field of candidates.

DE - Weiser

Q Of the four Negro candidates who stood for the Legislature, how many won?

A Joseph Lockridge won and Ian Holmes won.

Q And Brashear and Bedford did not. Is that correct?

A Brashear and Bedford lost, Brashear in the Democratic Primary and Bedford in the special election.

Q Can you tell us in your judgment based on your observations what distinguishes the race between those that were winners, that is, Lockridge and Holmes, as distinguished from the losers, Bedford and Brashear?

A Yes. In my opinion Lockridge was a slated candidate.

Q By whom was he slated?

A He was slated essentially by the DCRG.

Q That is the Democratic Committee for Responsible Government. Is that correct?

A That's correct.

Q Was the same true of Holmes?

A The same was true of Holmes, that is correct, and Brashear was not.

Q And Brashear was not?

A And Bedford was before the formation of the DCRG in formal organization, but he was not endorsed

1 ~~DR. WEISER~~ by any of the same groups that now make up the DCBS. 219

2 Q Does the DCBS in your observation dominate
3 the Democratic Primary as regards the selection or the
4 nomination of the candidates for the State Legislature?

5 A Yes, it does.

6 JUDGE GOLDBERG: Was there a black
7 Republican ever--?

8 MR. RICHARDS: Yes.

9 Q If you know them, Dan, why don't you tell
10 us?

11 A There have been several black Republicans
12 placed on their slate.

13 Q They don't have contested primaries?

14 A Usually unopposed. Jon Kirven was one.

15 REPORTER: What is his last name?

16 THE WITNESS: K-i-r-v-e-n, I believe.

17 A There was another one, as well, in an earlier
18 year.

19 Q Well, I think that we may have it otherwise
20 established in the record by exhibits.

21 Mr. Weiser, based on your analysis of the
22 election returns of Dallas County and your observation
23 of the contested primary races in the Democratic Primary,
24 what is your opinion as to whether a legislative candidate
25 in the primary must make some appeal to the black precincts

1 DE-Waiser 22u

2 in order to receive the nomination?

3 A Based on all the elections from 1970 to
4 1960, all of the contested legislative races, it made
5 absolutely no difference to a candidate's winning or
6 losing in terms of the vote he received in the Negro
7 block.

8 Each candidate who won, won without or
9 in spite of the Negro vote, and each candidate who lost
10 would have lost without the Negro vote; that is, if
11 you look at the winners and losers from the white block
12 alone, these are the winners and losers.

13 Q All right, sir. Do you even have any --
14 do you have any opinion as to whether, indeed, a candi-
15 date may run on a program hostile to the interests of
16 the black community and still, nevertheless, receive the
17 nomination?

18 A Yes, we have an example of that in the
19 1970 primary where material that you have alluded to
20 earlier was received, and even though---

21 Q Excuse me. What kind of material are you
22 talking about?

23 A This is material from the DCNG---.

24 Q It was put out in the white precincts?

25 A That was put out in the white precincts.

1 DE-Weiser

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2 Q All right.

3 A Even though this material was sent, and
4 even though the Negro candidate received 90 percent of
5 the vote in the Negro block, he received only 28 percent
6 of the vote in the white block, and over-all he received
7 42 percent of the vote, so he lost.

8 This was true of another candidate who
9 was slated with him.

10 Q Who was that?

11 A This was Bill Stehr, who was a white
12 candidate.

13 Q Based on your analysis of the election
14 returns and your observation of these contested primary
15 races in the Democratic Primary, what is your opinion
16 as to whether an independent black candidate, that is,
17 one not endorsed by the DCMG, or, for that matter, a
18 white candidate appealing to the black voter can obtain
19 a nomination in the Democratic Primary?

20 A I think it is impossible for him to obtain
21 the nomination under these circumstances.

22 Q Without the support of the DCMG?

23 A Without the support of the DCMG.

24 MR. RICHARDS: We pass the witness.

25 There may be other Plaintiffs who desire

1 DE-Weiser

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2 to examine. I'm not sure.

3 (No omission here.)
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Cross Examination of Maier 22

MR. CHS: Your Honor, at this point --

JUDGE JUSTICE: Identify yourself, please.

MR. CHS: Ose. C-o-s. At this point
of the procedure it comes to my mind --

JUDGE GOLDBERG: -- step up to the
podium, please.

MR. CHS: Yes, sir. Some points of
procedure come to my mind. I understood
yesterday, your Honor, we were going to
attempt to take the question of the Blacks
and then have the Mexican-Americans and
then have the Republicans. Should I then
confine my questions to this witness to
matters involving the Blacks, or, since he
may be gone by the time we get to the
Republicans --

JUDGE GOLDBERG: Develop your whole
case.

JUDGE WOOD: Develop your whole case
to save time.

MR. CHS: Very well, Your Honor. One
other point, Your Honor, we have exhibits
here also, a small number which -- some of
which are from Mr. Crouch, who is

1 C. E. - Weiser

2 unavoidably away, and will return this afternoon, and
3 one from myself. Should we put them in at a time when
4 we come to the Republican matters, rather than trying
5 to put them --

6 JUDGE GOLDBERG: -- are you going to
7 interrogate the witness with respect to
8 them?

9 MR. GEE: No, I am not.

10 JUDGE WOOD: Wait on these.

11 MR. GEE: Very well, Your Honor.

12 MR. RICHARDS: I have assumed now, we
13 have offered all of the exhibits that are
14 listed on our attachment here, and have
15 been exhibited to the Defendant, and I
16 assume they are received. Is that
17 correct? Some 90 or more exhibits?

18 JUDGE JUSTICE: Any of the exhibits
19 which you have listed in the final pre-
20 trial order to which no objection is
21 made in the final pretrial order is
22 received in evidence. Now, if there
23 is any objection made to these exhibits,
24 it should be called to the attention
25 of the Court.

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1 MR. RICHARDS: Excuse me for
2 interrupting.

3 MR. LUNA: If it please the
4 Court, we have each exchanged the
5 exhibits. We have not physically
6 listed them in the pre-trial order, but
7 we have shown all of our exhibits to them
8 and they --

9 JUDGE JUSTICE: -- why have they
10 not been listed? That was the order and
11 direction of the Court.

12 MR. RICHARDS: We have a list here
13 and we can attach them to the pre-trial
14 order. We don't have the pre-trial order,
15 Your Honor.

16 JUDGE JUSTICE: Have there been such
17 a list made by the Defendants?

18 MR. LUNA: We have made such a list,
19 Your Honor.

20 JUDGE JUSTICE: See to it that it is
21 attached to the final pre-trial order.

22 MR. LUNA: Yes, sir. Some of ours,
23 and as we started to trial, some of theirs
24 was still being marked.
25

C. E. - Weiser

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MR. RICHARDS: Excuse me for the interruption.

MR. GEE: I have a list also, Your Honor.

JUDGE JUSTICE: You are just going to interrogate this witness as I understand, in relation to the Republican party?

MR. GEE: That's correct. And I will have very few questions. These are essentially the stipulations I attempted to obtain at the pre-trial.

CROSS EXAMINATION

Questions by Mr. Gee:

Q Would you tell me, sir -- I realize this may seem so obvious that it is foolish to ask, but would you tell me whether, in your opinion, based upon your observation and experience which you have related to the Court, it is more expensive to run a campaign from a legislative standpoint in a multi-member district situation, such as Dallas, than in a single member situation

C. E. - Walser

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of essentially or close to the ideal size, 74,000 voters?

A Yes, sir. It is more expensive.

Q Do you have any idea how much more expensive? How many voters are in Dallas County, roughly speaking?

A We have close to a half million. We had close to a half million last year and for the preceding two years.

Q All right, sir. And I suppose it follows that if one of 18 or 19 legislators or candidates for the Legislature wishes to be elected, he has to plan at least to make some sort of approach to a half million people?

A Yes. There would be some savings, of course, if you were working with a slate, as opposed to one candidate over the entire country. But you are still trying to appeal in terms of mail and media to the half million voters.

Q As opposed to about -- I believe the ideal figure for Texas has been testified to be about 74 or 75,000?

A That's correct, yes.

Q So in some ratio, perhaps not that obtained by comparing 75 to a half million, but in perhaps some multiple of 75,000, it would be more expensive?

C. E. - Weiser

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A Yes. That's correct.

Q Have you any opinion, sir, and I realize it is a little difficult to get hold of -- have you any opinion as to whether and again, I don't want to press you beyond what you feel your qualifications are, whether a representative from a single-membered district is more likely to be in touch with the wishes and desires politically, of his constituents than one who has to represent all of Dallas County or essentially all of it?

A Yes. I have strong opinions there.

Q Would you tell the Court what these opinions are, if you please?

A Yes, sir. I feel very strongly that the candidate and also the elected official in a single-member legislative district can much more easily keep track of the wishes of his constituents than can one at present from one of 15 or one of 18. From my own personal experience, dealing and discussing matters with members of the Legislature, when there are 15, then it is rather difficult to know who is yours; if you have one, in fact. And so it is sort of more difficult to find out really where you should really go. It is also, of course, more difficult to keep track of what he is doing. In fact, sometimes it is difficult to even know the names of all

1 C. E. - Weiser

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2 of them.

3 Q: May I ask you, sir, if in your view there
4 are recognizable -- what you might call, to transmute your
5 phrase a little bit -- Republican black, geographical
6 areas in Dallas County?

7 A: Yes, sir, although you wouldn't find them,
8 of course, using the census tract information, but I think
9 in fact, I have done this for political campaigns in the
10 past. You go ahead and find a pattern that repeats itself
11 over and over again in these elections, the November
12 elections, and you look first at the 80 to 100 percent
13 Republican areas in terms of their vote for the Presidential
14 nominee and you look at the 70 and the 80 and the 60 to
15 70, and you can make or see areas that election after
16 election stand out and remain in this category. So I would
17 say it is a rather standard way of doing this.

18 MR. GEE: May I approach the witness,
19 Your Honor?

20 JUDGE GILBERT: Yes.

21 Q: And this is going to have to be rough,
22 of course, but Plaintiff's Exhibit Number 1, sir --

23 JUDGE JUSTICE: -- speak a little louder,
24 please, Mr. Gee.

25 MR. GEE: Yes. I beg your pardon.

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Q I am holding it with the north end up.
Can you indicate to the Court in a general way what the geographical location of this Republican block would be, sir?

A Yes. Usually, you think of it as starting close to the Park Cities here which are shown here. Of course, you skip the Negro area here and you continue going north, and also, usually west, including Irving, and it also goes around White Rock Lake here and on, including Richardson and probably stopping at Garland; not going into Garland.

JUDGE JUSTICE: Do you have an objection?

MR. LUNA: Yes, sir. Without making these objections repeatedly, if it please the Court, we do want to point out that we do object to the conclusion that a person is a Republican simply because he may have voted in a Presidential election for the Republican candidate for President. Pre-trial order shows that a person joins either the Republican Party or the Democratic Party in Texas by participating in the primary of that party, rather than by voting for some particular nominee in the general election.

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MR. CHAIR: Thank you, sir.

Q I have reference to those who vote regularly Republican in the general election. Is that what you have been describing, sir?

A Yes, sir. There is usually a -- quite a bit of straight party voting and therefore, when you find a vote for a Presidential candidate, quite often it carries over to the major Republican candidates that were voting for the Republican candidate or, of course, the Democratic ones.

Q May I ask you, sir, going back to this -- I had asked you earlier if you feel it was more difficult for a representative to understand or keep in touch with the wishes of his constituents in a multi-member situation than in a single member one. What about the constituents? I believe you said in passing that it was kind of hard to tell who was your man or if you had a man. That is why I am asking.

A Yes, sir. Would you repeat the question?

Q The question is whether the constituents, the voters, are likely to find more difficulty in knowing what the candidates are for or what their past records are?

A Yes. Of course, as I said, it is difficult to tell even who they are, let alone to tell what

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they stand for in this case.

Q Two more questions. Does the multi-member district situation, in your view, place a premium on the well-financed candidate?

A Would you repeat that?

Q All right, sir. Bearing in mind the cost of television and matters of that sort, does the multi-member district situation in Dallas County, as opposed to some appropriate single member system, favor the well-financed candidate?

A Yes.

Q And why do you say that, sir?

A Well, because of the cost of the campaign, unless under very unusual circumstances, the person is already well-known to the million, three hundred thousand people in Dallas County. So, just the cost of getting name familiarity, to some extent, is extremely expensive.

Q Pretty well rules out door-to-door campaign?

A Completely.

Q All right. In fact, it might tend to favor the candidate supported by those able to make substantial financial contributions to his campaign against

1 C. E. Weiser

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2 a candidate who was supported by those who are not.

3 A In Dallas County, as a whole, I think
4 that is correct, sir.

5 Q Do you know anything about Harris
6 County, sir?

7 A Well, of course, I went to school there
8 for eight years and I am familiar with, in a general way,
9 the County and the County politics.

10 Q Well, now, I don't want to press your
11 expertise.

12 MR. GEE: This is my second question,
13 may it please the Court. I regarded his answer as to the
14 first one.

15 Q I don't want to press your expertise
16 beyond what you feel the limits are, but can you think of
17 any reason other than political reasons for having multi-
18 member districts in Dallas County and single member
19 districts in Harris County?

20 A No, sir.

21 MR. GEE: Thank you.

22 MR. CUMMINGS: May it please the
23 Court, my associates E. Eric Cunningham and I
24 represent three of the Black Plaintiffs,
25 Counsel George A. Allen, Representative A. W.

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Holmes, Junior, and School Board
Trustee, Dr. E. J. Courad. If the
Court would allow, I would like to ask
Mr. Weiser two questions.

CROSS EXAMINATIONQUESTIONS BY MR. CUMMINGS:

Q Mr. Weiser, you have indicated that
Representative Joseph Lockridge was endorsed by the D.C.R.C.
and was slated in the Democratic primary. Is that correct,
sir?

A That's correct.

Q And that he won?

A That's correct.

Q Do you have an opinion whether or not
he would have won if he had not been endorsed by the D.C.R.C.
and slated with the other 11 candidates?

A Yes, I do have.

Q And what is that opinion, sir?

A He would have lost.

Q Okay. With respect to Representative
Zan W. Holmes, Jr., who was also slated with 14 other
candidates and ran with the endorsement of the D.C.R.C., do

C. E. - Waizer

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you have an opinion whether or not he would have won or lost, sir?

A I do.

Q Would he have won or lost?

A I believe he would have lost.

Q Okay. In other words, the two candidates that have won, in each case have been elated, supported by the D.C.R.G. and won?

A That's correct.

Q And if they had not had this support and had not been elated, it is your opinion that they would have lost?

A Yes, sir. Because the test, as I see it, was the Berlin-Bachner race. And in that case, he was not elated and he lost.

MR. CUNNINGHAM: Thank you, sir.

MR. RICHARDS: Before I pose this, could I get two exhibits -- he has referred to two exhibits in his testimony and I would simply like the record to reflect the numbers which he had in mind. May I do that, Your Honor?

JUDGE GOLDEN: Yes, sir.

ED. E. - Weiser

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EXHIBIT EXAMINATIONQUESTIONS BY MR. RICHARDS:

Q Mr. Weiser, in response to my questions, you referred to certain D.C.R.G. mailings that were put out during the course of the Democratic primary run off in which Berlin Bashear was a candidate?

A Yes, sir.

Q I want to hand you what has previously been marked as 54 and 55 and ask you if these are the two mailings that you had in mind, or which, if either one of them, you had in mind?

A Yes. The material here in 54 -- this is the same as the material that was mailed out in a number of the precincts.

Q White precincts?

A The white precincts that I have seen before.

Q And it was that mailing that you referred to, having the specific racial connotation that led you to feel that the independent Black would be unsuccessful in Dallas County? Is that correct?

A That's correct.

1 MR. E. - Weiser

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2 MR. RICHARDS: Thank you, sir.

3 That's all we have. Pass the witness.

Cross Examination - Weiser

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MR. EASON: Your Honor, I have two or three questions I would like to ask.

JUDGE JUSTICE: All right.

MR. EASON: My name is Nathan Eason and I represent the San Antonio Republicans and I would like to ask two or three questions.

CROSS EXAMINATION

Questions by Mr. Eason:

Q. Mr. Weiser, in order to correlate the San Antonio situation, if I can, with the Dallas. Now, you stated in Mr. Gee-- in answer to his questions-- that it would be more costly to conduct the campaign in a multi-member district than in a single-member district.

A. Yes.

Q. Would this also be true in Bexar County?

A. I would think so.

Q. You also stated, as I recall, that the elected official could be closer to the constituency involved and the problems covered and the constituents could be closer to the official in a single-member district?

A. Yes.

Q. This too would be true in Bexar County,

1 Cross Examination - Weiser

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2 wouldn't it?

3 A Yes.

4 Q And, you first stated there was an identi-
5 fiable Republican area in Dallas County. And, I realize
6 that you may not be familiar with Bexar, but do you know
7 whether or not there is an identifiable Republican area in
8 Bexar County?

9 A No, sir, I do not.

10 Q You further stated that you didn't know of
11 any reason, any political reason, why Harris County should
12 have single-member districts and Dallas County have multi-
13 member districts?

14 A That is correct.

15 Q Do you know of any reason why Harris should
16 have single-member districts and Bexar should have multi-
17 member districts?

18 A No.

19 Q And, I further believe you stated that the
20 multi-member districts favored the wealthy candidate.
21 You weren't just confining that to Dallas, but that would
22 also be true in Bexar.

23 A I believe it is true in Bexar County as well.

24 MR. KASCH: Thank you, sir.

Cross Examination - Weiser

CROSS EXAMINATIONQuestions by Mr. Idar:

Q Mr. Weiser, most of your testimony has related to the Black population in Dallas County and some of the adverse affects upon that population under the present electoral scheme followed by the State of Texas in the multi-member versus single-member issue.

A Yes.

Q I wonder whether you have any information relating to the Mexican-American population in Dallas?

A I do from the 1960 census only, and some follow-up which we-- when I was involved with specific registration drives in the Mexican-American community in Dallas.

Q Would it be a fair statement to state that there were two-- shall I call them pockets-- of Mexican-American concentration in Dallas. One of them being known as Little Mexico and the other one being known as West Dallas?

A I believe that was true in 1960. I don't know that that is the case now.

Q Has the demography of those two areas changed to that extent in the intervening time?

Cross Examination - Weiser

A I know that-- to answer that in terms-- there was a Mexican-American candidate for the School Board and there were areas other than these two where special appeals with Spanish material were sent. Therefore, I would say that the areas of a large sum-- in fact, there are other areas that I believe now would be considered over fifty per cent Mexican-American-- other than these two areas that you mentioned.

Q I don't want to go into the specific points of your testimony as you have related to the adverse effects on the Black population. I would simply ask you whether the same effect would generally apply to the Mexican-American population in Dallas?

A For the Mexican-American population in Dallas, I believe, in 1960 there were 28,000 counted by Spanish surname. And, it is usual to include others, add an additional several per cent, in that the census is not very complete. So, that I really don't have a feeling or knowledge of, one, of how many Mexican-Americans there are now in Dallas County. And, two, what the political effect of this number would be.

JUDGE WOOD: What is the percentage of the population, Mexican-American, in Dallas?

A Well, it is whatever-- I really don't know.

1 Cross Examination - Weiser

2 But, it is the fourth count summary tapes you are-- At
3 least, I haven't seen--

4 JUDGE WOOD: You said there were 28,000?

5 A In 1960.

6 JUDGE WOOD: All right.

7 A Close to a million--

8 JUDGE WOOD: You don't know what the per
9 cent of Mexican-American is compared to the total
10 population of Dallas County at this time?

11 A No, sir, I don't.

12 JUDGE WOOD: All right.

13 BY MR. IDAR:

14
15 Q I don't know that you got the full import
16 of my question. My question was: Whether the same
17 adverse affects of the electoral system and the multi-
18 member versus the single-member issue in Dallas, as they
19 affect the Negro adversely, would also affect the Mexican-
20 American population-- whatever be its number?

21 A I really have no--

22 MR. IDAR: All right. Thank you.

23 JUDGE JUSTICE: Is there any cross
24 examination of this witness?

25 MR. LUNA: Yes, sir.

1 Cross Examination - Weiser

2 JUDGE JUSTICE: Would you identify yourself
3 for the record, please?

4 MR. LIMA: My name is Earl Lima and I
5 represent Roy Orr, the Chairman of the State
6 Democratic Executive Committee, one of the
7 defendants in the Tyler case.

8 CROSS EXAMINATION

9 Questions by Mr. Lima:

10
11 Q Mr. Weiser, with respect to the Black
12 population in Dallas County, in addition to the pockets
13 of population that you have talked about, isn't there an
14 additional Black population in other areas of Dallas
15 County where it in some instances is mixed with the
16 White, a minority of it being Black, and other areas
17 where blacks at a time is Black?

18 A As I pointed out on the map, there are
19 other areas, but very small areas because they constitute
20 only ten per cent. There is an area in Irving, there is
21 one precinct in Irving, that is predominantly Black,
22 although it doesn't show on the census tract because
23 there are only nine hundred Negroes there.

24 Q And, for instance, in Carrollton, there are
25 areas that are identifiable Black areas, are there not?

Cross Examination - Weiser

1 A Yes, sir, of about, oh, several hundred, I
2 guess.
3

4 Q And, in Rollette--

5 A Well, Rollette is two hundred people or
6 five hundred people.

7 Q Is that what you feel it is?

8 A Maybe a thousand. I mean, it is a very
9 small community in Rollette, so I am really not aware
10 how many Negroes there are in Rollette.

11 Q And, Garland?

12 A In Garland, I think, we are talking about
13 three per cent of Garland or four per cent of Garland
14 is Negro.

15 Q Well, we are talking about sufficient Black
16 families in Garland to have about two thousand students in
17 school, are we not?

18 A Four per cent. I guess your population was--
19 Garland has enough population for just enough for a
20 legislative district, so it would be about 80,000-- four
21 per cent would be 3,200. Conceivably, yes.

22 Q But, in that area they don't all live in
23 a concentrated area; they are scattered out, are they not?

24 A I really don't know, sir.

25 Q I see. So, then as far as your expertise

Cross Examination - Weisner

and analysis of the voting patterns and habits is concerned, then, it is mainly limited to the City of Dallas, is that correct?

A Well, I have also analyzed the precinct in Grand Prairie. And, apart from that, there are some areas in Wilmer Hutchins, and those are the block areas, and that is where the analysis that has been presented goes. Yes, sir.

Q Mr. Weisner, perhaps I did not understand you correctly. I understood you to tell us a little bit ago that Mr. Joseph Lockridge was on a DCMS slate, and but for being on the DCMS slate would not have been elected, is that correct?

A That is correct.

Q Do you have such a slate— any item of evidence to indicate to these Courts that the DCMS at the time Joseph Lockridge was a candidate endorsed Joseph Lockridge or any other candidate for public office?

A No, I do not have a slate card of that.

Q Do you have anything— any documentary evidence?

A No, I do not have it to present at this time.

Cross Examination - Weiser

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Q Well, would it be fair to say, then, in making that statement you are drawing on your memory?

A Yes, sir, that is my political memory.

Q If it has been otherwise testified here as a fact, under oath, by Mr. George Bock, who is chairman, testified as Chairman of the DCRG, that until the 1970 elections the DCRG never endorsed candidates for the legislature, would you say that perhaps that refreshed your memory?

A No, sir. I would say that the members of the DCRG, which at one time were primarily concerned with precinct chairman races, also slated candidates for other races along with their precinct chairman and that these same-- the same group of DCRG candidates put out slate cards, and on that slate card along with their precinct chairman candidate was included Joseph Lockridge.

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Q So then, when you talk about the DCRG, you are not talking about the organization. You are talking about a group of people that made a slate card that you feel also belonged to the DCRG?

A Well, on the slate cards in various precincts the DCRG label was put, in particular my own precinct, with the candidate running against me for Precinct Chairman.

Q I know that you are very competent in saving that political information. Have you saved one of those with the DCRG name on it?

A I don't know.

Q So then, would you say that the DCRG is an organization, so far as you know, did not, in fact, endorse candidates for public office prior to 1970?

A No, sir, I would again say that here we have an organization of the DCRG that has never had any public election of its nominees that I am aware of. It has never had a public election of its Precinct Chairman nominees, but that has acted in various ways formally and informally in terms of, say, billing, in terms of running joint campaigns, in terms of slating activity, and that they were -- this was in evidence in the Lockridge race, as well as in the 1970 races.

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Q Aren't there many organizations who endorse candidates in the primary, in addition to the DCRG?

A Yes, sir.

Q For instance, you would not say that the endorsement of the AFL-CIO was unimportant in a political race, would you?

A No, sir, I would not.

Q You would not say that the Progressive Voters League was unimportant?

A No, sir, I would not.

Q You would not say that the endorsement of the Dallas United Labor Committee -- Citizens for Fair Taxes was an unimportant endorsement, would you?

A That one, I am not familiar with.

Q You are not familiar with it. You are not familiar that that one, along with the other ones that I named, also endorsed Representative Sam Holmes and another list of candidates, starting off with Senator Ralph Yarborough?

A There's a difference, and the difference is---

Q Excuse me. Are you familiar with that?

A Yes, sir, there's a difference in the

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Barlaine Brashear race. The same organizations that you just mentioned endorsed Barlaine Brashear with the exception of the DCRG, and in that particular race in the first primary Barlaine Brashear received 12 percent of the white vote and 71 percent of the black vote, and you can compare that with Joseph Lockridge receiving 47 percent of the white vote in a contested -- a three-man race.

Q I understood you to say that it makes no difference in elections in Dallas County whether a candidate has the support of the black community. Did I misunderstand you?

A In terms of the legislative race of the Democratic Primary.

Q I see. In the General Election isn't it a virtual necessity that a candidate have the support of the black community in order to win a general election in Dallas County?

A Not a candidate for the Legislature, because he goes in on the ticket.

Q Don't they all seek it?

(REPORTER'S NOTE: There was

no audible response from the witness.)

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Q Don't all candidates for the Legislature seek the endorsement of the black community in their vote?

MR. RICHARDS: Excuse me. Which election? Primary or general election?

MR. LUMA: No, we are talking about in the general election.

A Yes, in the general election they do, usually in the general election.

Q If we took the candidates for the Legislature in the general election, I'm sure that you have analyzed these votes, and didn't you find that the Democratic candidates who were elected in 1970 in the general election, if you took away the black vote from them, every one of them would have been defeated, wouldn't they?

A Yes, sir.

Q So then, it is a necessity in the General Election that black candidates have -- that all candidates who expect to win in the General Election have support from the black community?

A There is a distinction here.

Q Is that true?

A There is a distinction here. They want to come in on the slate, but it isn't necessary that an

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2 individual legislative candidates, being only one of 15
3 or possibly one of 18, make an appeal at all to the black
4 community.

5 Q I am going to hand you what has been
6 marked for identification purposes as Defendants' Exhibit
7 No. 53, composed of three slate cards together with another
8 political pamphlet headed "Vote for George Bush" with
9 other information on it, and ask you, first of all, if
10 you are not familiar with all these organizations listed
11 on the slate cards that I asked you about earlier as
12 supporting candidates, and number two, if these documents
13 don't indicate that all of the candidates listed there
14 were actively seeking support of the black community.

15 A Let's see. I just looked at the first
16 one.

17 This was May 2nd, and it starts with
18 Senator Yarborough, Mike McNeil, Sam Barnes, Bob Armstrong,
19 Oscar W. Nausy, and then it has a number of State Repre-
20 sentatives and a Probate Judge and a Precinct Chairman.

21 The second one doesn't -- "Elect these
22 friends of Lyndon B. Johnson -- Governor Yarborough, Lt.
23 Governor Barnes --" several Supreme Court, and there are
24 some legislative places on here I don't believe I have
25 ever seen that one.

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2 Let's see. The third one is a card appar-
3 ently to Precinct 308, and it is an appeal in a general
4 election to pull the straight party lever, and the names
5 on it are to elect Ian Holmes, Oscar Maury.

6 And then the last one is a piece of
7 campaign material, "Vote George Bush. Vote for the man
8 of the party."

9 Some of this I have seen, I believe, the
10 first card before, but none of the others.

11 Q All right, sir. Mr. Weiser, I understood
12 you to say on direct examination that multimember districts
13 were more costly to be elected in than less than or single
14 member districts.

15 A Yes, sir.

16 Q By that you are saying that a person running
17 county-wide in Dallas County for office would be expected
18 to spend more money than somebody running for an office
19 that was less than county-wide.

20 Is that what you are saying?

21 A To be successful.

22 Q To be successful?

23 A To be successful, yes, sir.

24 Q So then, you feel it would favor the afflu-
25 ent or rich candidates. Is that your testimony?

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A It would favor them in that respect, yes, sir.

Q If we took a hypothetical situation where we had a county-wide race with, say, ten people in that race or more -- 10 people.

A You mean like in a special election?

Q Well, like in a special election.

A All right.

Q Then we would expect the person to spend more money than somebody might spend in another election of less than county-wide.

Is that what you are saying?

A Now, that may not be true in a congressional race. You shift from a legislative race to a congressional race, say, or a senatorial district race; then it isn't necessarily true. In fact, it usually isn't true that a candidate for the Legislature spends more than a candidate for the Senate or for Congress at all, but on a legislative district I believe that is true.

Q On the special election in 1968 you have already told us that Representative Sam Holmes was elected there, right?

A Yes, sir.

Q But I believe you hadn't found the records --

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2 if I may show you Defendants' Exhibit No. 3---.

3
4 (REPORTER'S NOTE: Counsel hands
5 exhibit to witness.)
6

7 Q Having reviewed Defendants' Exhibit No. 3,
8 when you have an opportunity to look at it, would it be
9 correct to say that in that 1968 special election wherein
10 Ian Holmes was elected, there were 18 candidates who offered
11 themselves for election, and that Ian Holmes, the black
12 candidate, received more votes than the other 17 all put
13 together in the county-wide race? Would that be correct?

14 A I haven't counted the 18, but, yes, sir,
15 that's correct.

16 Q Would you take a quick look at it and see
17 if that is correct?

18
19 (REPORTER'S NOTE: The witness
20 complies.)
21

22 A Yes, sir, there are 18.

23 Q Next I hand you -- I believe it was
24 Defendants' Exhibit No. 8 and ask you to look at that and
25 see whether or not it appears to be the expense accounts

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2 of all candidates in that special election and that the
3 total expenditure of Sam Holmes to beat those 17 white
4 candidates in one race totaled \$1,038.91.

5 MR. RICHARDS: Excuse me, Court

6 please, this will come up with respect
7 to the Defendants' exhibits on election
8 costs. We take it those reflect only
9 the expenditures of the candidates them-
10 selves and not necessarily expenditures
11 of other organizations on their behalf.

12 To the extent of that modification, we
13 understand---.

14 JUDGE GOLDBERG: The exhibit will speak
15 for itself.

16 MR. RICHARDS: Well, actually, the
17 exhibit we have been tendered does not.
18 It just says "Record of expenses," and we
19 take it, it is only the record on file
20 with the County Clerk by the candidate.
21 Is that correct?

22 MR. LOMA: Well, the Court, I'm sure,
23 will take judicial knowledge of the statute
24 in Texas that requires candidates to report
25 all funds that were spent by them or by

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2 anybody in their behalf.

3 JUDGE GOLDBERG: Does it bear a file
4 mark of any kind?5 MR. LUNA: It bears the file mark of
6 the County Clerk. It is the affidavit of
7 the candidate himself as to his expenses,
8 Your Honor.

9 JUDGE GOLDBERG: Thank you. Proceed.

10 THE WITNESS: Was there a question?

11 Q The question, Mr. Weiser, was to ask you to
12 take a quick look at the affidavits of Mr. Ian Holmes and
13 tell us whether or not they reflect that Ian Holmes in that
14 special election spent \$1,038.91 in defeating 17 candidates
15 in a county-wide election.

16 A I don't see the totals listed here.

17 Q Well, they are not totaled up, but would
18 you look over on the last page at the totals in the two
19 and see if that is not correct?

20 A I still can't find it.

21
22 (REPORTER'S NOTE: Counsel approaches
23 the witness.)

24 (PAUSE)

25 JUDGE GOLDBERG: Can't it be stipulated

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2 that this document was filed and shows
3 these figures?

4 MR. RICHARDS: Surely. We are not
5 quarrelling with the figures on file.

6 JUDGE GOLDBERG: It speaks for itself,
7 surely, and we have got to move along with
8 this case.

9 MR. RICHARDS: Surely. I am not
10 quarrelling with that.

11 JUDGE GOLDBERG: We cannot have this
12 kind of bickering going on.

13 Q Mr. Weiser, would it be correct to say that
14 you could not call an area an identifiable Republican
15 area or classify people as Republican simply because they
16 may have voted for a Republican candidate in November
17 elections?

18 A One time? You mean---?

19 Q Or more.

20 A It is fairly standard in my opinion to do
21 an analysis to pick out Democratic and Republican areas.
22 In fact, I know maps were available for redistricting
23 purposes by the State of Texas. And the analysis is
24 fairly standard by all people doing that analysis.

25 Q You know Mr. Curtis Graves, one of the

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2 Plaintiffs in this case?

3 A Yes, sir.

4 Q Isn't it a fact that he headed up state-wide
5 last general election a group supporting Republicans for
6 election in the general election?

7 A He was -- I am aware of a group of that
8 type, yes, sir.

9 Q And isn't it a fact that he was elected
10 to the Legislature as a Democrat?

11 A Yes, sir.

12 Q And do you also know that he has announced
13 that he intends to announce as a candidate for Congress
14 in the Democratic Primary this year?

15 A I assume I follow that, yes, sir.

16 Q In a county such as Dallas, Mr. Weiser,
17 don't we have a lot of areas where we have a community of
18 interests of all people in the entire county in areas
19 such as the Dallas County Junior College, University of
20 Texas at Dallas, the Trinity River Project, Parkland
21 Hospital District, and many other areas?

22 A Yes, sir.

23 Q And isn't the interest of a person in
24 South Dallas, North Dallas or Dallas County, east or west,
25 just as important and just as tied to that hospital district

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2 as one in any other area?

3 A Now, of course, you are choosing the
4 hospital district---.

5 Q Let's talk about the hospital district
6 first. Would that be true?

7 A No, sir, in the hospital district there are
8 people from Irving who sort of would rather have a separate
9 hospital district, rather than that, but there are other
10 areas.

11 Q Now, isn't it a fact that if we had single
12 member districts, only those members who were elected
13 from the Legislature in areas, such as what we might call
14 the poverty areas, who use Parkland Hospital most, would
15 be the only ones who would be inclined to support it?

16 A No, sir, not at all. I mean we have an
17 example of the State Senators.

18 Q All right.

19 A Who represent different areas in Dallas
20 County. Yet, they combine to agree on Dallas County
21 matters.

22 (No omission here.)

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Q All right. So then back to my original principle, people in all parts of the County are interested in the Parkland Hospital District, are they not?

A Well, in that particular case, in the Parkland case, I just happen to know that in Irving, there are some people who had rather have their own hospital district.

Q Well, some people, but you don't think that a single member, Legislative District Member, would not be for the hospital, sir, if he was elected from Irving do you?

A Would you repeat that?

Q If we had single-member districts and one being composed by part of Irving, that being a City of over 100,000, would you expect him to support the hospital district or not to support it?

A I really have no judgment, unless I know what the alternatives would be in this case.

Q All right. So generally, whether they would support it or not, we need a county-wide and everybody should support it in your expert opinion? Is that right, Mr. Weiser?

A The Parkland Hospital, I favor the Parkland Hospital. I think it should be supported.

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Q You also favored the election of
Reverend Ian Holmes, didn't you?

A Yes, sir. I seconded the nomination
when the Executive Committee unanimously nominated him
to fulfill the expired term.

Q And I offered the resolution?

A Yes, sir.

Q And so then would it be fair to say that
when we have a candidate who is qualified and who works
hard, that people in Dallas County will support him
regardless of his race, creed, color, religion or national
origin?

A No, sir, not in the Democratic primary
in the legislative races.

Q Well, the Dallas County Executive
Committee nominated him, didn't they?

A If you recall, first he was nominated
by the D.C.R.C group and then the other group seconded
the nomination. And it is my opinion that it would never
have worked the other way around.

Q Do you know Mr. Dick Reed, one of the
Plaintiffs' in this case?

A Yes, sir.

Q Now, Mr. Dick Reed has been elected for

1 C. E. - Weiser

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2 the Legislature twice? Is that right?

3 A Yes, sir, he has.

4 Q I assume, then, from what you said,
5 that a person must have the support of the D.C.R.G. to be
6 elected to the Legislature and that Mr. Dick Reed had
7 that support. Would that be right?

8 A No, sir, unless there are very, very
9 unusual circumstances.

10 Q So then Mr. Dick Reed has been twice
11 elected County-wide and did not have that support, is that
12 right?

13 A That's correct.

14 Q Do you know Mr. Jim Stroud?

15 A Yes, sir.

16 Q Incidentally, Dick Reed is white, isn't
17 he?

18 A Dick Reed is white.

19 Q Mr. Jim Stroud was elected originally
20 to the Legislature and County-wide, after first having
21 been nominated by the Democratic Executive Committee and
22 did not have the D.C.R.G. support, did he?

23 A He didn't need the D.C.R.G. support,
24 because the primary was over. He only needed the nomination.
25 Once past the nomination, then the Democrats win or

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lose together.

Q The Democrats win or lose together in Dallas County.

A For the most part, in the Legislative races.

Q In 1962, did you live in Dallas County?

A Yes, sir, I did, and they all lost.

Q Every one of them lost?

A All but the contested Legislative races were lost by the Democratic party.

Q And eight Republicans were elected that year, were they not? Six or eight?

A I don't believe eight.

Q Six?

A Let's see. I think we had a nine-member delegation. I believe six, yes, sir.

Q And this year, this past election, 1970, we had a republican who was elected to the Legislature County-wide, did we not?

A Yes, sir.

Q Who was that?

A Fred Agnich.

Q Do you know Judge -- former Judge John Bryant who was elected as County Court at Law Judge on

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the Republican ticket?

A Yes, sir.

Q County Court at Law Judges are elected County-wide in Dallas County?

A Yes, sir.

Q Do you know Judge Grover Hart, former Republican Judge of the County Court at Law?

A No, sir, I don't.

MR. RICHARDS: We stipulated in our pre-trial order that they were elected County-wide, I believe.

MR. LUNA: Yes, we did.

Q Now, when you mentioned earlier about the problems that Republicans had in the Republican areas, isn't it a fact that in Dallas County if a Republican has a program that appeals to the majority of the voters, that Republican is generally elected?

A Are you speaking about legislative races?

Q In any race.

A Well, no, sir. I don't find that the case. I think it depends upon the district. Are you speaking about County-wide?

Q Well, let's say County-wide.

A Well, County-wide, for the most part, in

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2 the Legislative races, in November, it is a matter of
3 straight party voting with the difference between maybe
4 5 percent on the average.

5 Q What about other races?

6 A Well, for instance, which --

7 Q -- for instance, wasn't there a
8 Republican in Dallas County named Mr. Bruce Alger, that
9 was elected in 1934 and served through 1964, continuously
10 as a Republican?

11 A Yes, sir, there was.

12 Q So his program at that time appealed
13 and he was elected, wasn't he?

14 A Yes, sir. I assume so.

15 Q Joseph Lockridge, when originally elected
16 was running against Gene Ball and Ben Lewis, whom you have
17 named?

18 A Yes, sir.

19 Q One of whom, namely, Ben Lewis, was a
20 member of the Legislature, was he not?

21 A Yes. At that time in the primary he was
22 a member.

23 Q Was an incumbent?

24 A Yes. That's correct.

25 Q So Joe Lockridge, the Black --

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2 A Yes, sir.

3 Q - beat an incumbent plus another
4 candidate, Gene Ball, in a County-wide election without
5 a run-off, did he not?

6 A Yes, sir. Very impressive. It showed
7 the power of the D.C.E.C. at that time.

8 Q I believe you have told us in your
9 figures that the Black population of Dallas County
10 registers to vote at a slightly higher percentage than the
11 white population? Is that right?

12 A Yes, sir.

13 Q And then they vote at about the same
14 ratio, do they not?

15 A Probably a little less, depending upon
16 the elections.

17 Q Are you aware that the Democratic
18 Committee in Dallas County has this year been urging that
19 at least three Blacks run for the Texas House with the
20 additional seats available?

21 A Is this the Democratic People for
22 Responsible Government that has been urging this?

23 Q I am talking about the Democratic
24 Party.

25 A Is this through the Democratic Executive

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2 Committee Voting Resolution --

3 Q -- apparently you are not aware of it,
4 Mr. Weiser?

5 A No, sir.

6 Q All right. If, in fact, the figures
7 show that County-wide legislative candidates are elected
8 for less money than a less than County-wide State Senatorial
9 District, would you think that is significant insofar as
10 what you have said about it costing more, County-wide?

11 A No. That is why I made the distinction
12 between the Senatorial District, Congressional District
13 and Legislative Districts. I mean, in a Congressional
14 District, where people are able to focus in on an important
15 -- very important office, the campaign costs are several
16 hundred thousand dollars, quite often, for each candidate.

17 Q What is your political affiliation?

18 A I am a Democrat.

19 Q And do you label yourself one way or the
20 other?

21 A I label myself as a Democrat.

22 Q Well, do you at some times label yourself
23 as either a liberal or conservative Democrat?

24 A I have been labeled as a liberal
25 Democrat, yes, sir.

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Q In your opinion, Mr. Weiser, would more liberal Democrats be elected in a County-wide system, or for the Legislature, I am talking about, or in single member districts?

A There again, in terms of what I have looked at here, it doesn't seem to make a difference whether they are liberal or conservative on getting the slate of the D.C.R.G. In other words, the D.C.R.G. has slated some liberals and it has -- as a rule, I guess, it slates conservatives, but it has slated some liberals. For instance, in the last election, it slated Jim Stroud, Zan Holmes and some of the others usually labeled by themselves as moderate to liberal.

Q So then would you feel it would not make any difference?

A So I would think that the importance of the D.C.R.G. slating, if suddenly they started slating these that were called liberals, that this would change the delegation immediately.

JUDGE GOLDBERG: Are you suggesting that it is more important to have the D.C.R.G. endorsement than it is to have single member districts? Is that the conclusion you want to draw?

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2 A In terms of the -- in terms of getting
3 elected now in Dallas County?

4 JUDGE GOLDENBERG: Yes, I believe that
5 is what Mr. Luna is asking you.

6 A Yes, sir. I believe that more candi-
7 dates will be elected with the D.C.R.C. slate than if
8 single member districts, because the Republicans --

9 JUDGE WOOD: -- well, Mr. Weiser,
10 isn't it a fact, though, that the incumbency
11 of a candidate, the fact that he runs with a
12 ticket, the fact that he is very attractive
13 on television, he comes through well, he is
14 qualified, he is highly attractive on the
15 media, television, radio, newspapers, has a
16 great personality, highly qualified and
17 appealing, aren't these factors that seem to
18 override, in Dallas County, the color of his
19 skin?

20 A No, sir. Not for the Legislative race.

21 JUDGE WOOD: I am saying "support".
22 Broadbase support or organized slated ticket
23 support is certainly not new to Dallas County.
24 It happens in Bexar and it happens in Harris.

25 A Yes, sir.

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JUDGE WOOD: And of course, the fact that a man is an incumbent and he is supported by a well-organized group like in Bexar County the Good Government League, which is somewhat a counterpart, and they have a legislative group there, aren't all of these factors -- and financing.

Financing is a fact of life in politics?

A Yes, sir.

JUDGE WOOD: You may have the most attractive candidate in the world and if he is not financed, he can't win any place, can he? You might not can win with it, but without that, you can't win without some adequate financing?

A Yes, sir.

JUDGE WOOD: Don't you think these factors are important and override perhaps the color of a person's skin?

A They haven't in the past, sir.

JUDGE WOOD: Well, Bruce Alger was there for a long time.

A I am sorry. I was speaking from the legislative races.

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2 JUDGE WOOD: Well, these are
3 County-wide races, are they not, and
4 they are at large, Congressional races?

5 A Yes, sir. And on a Congressional
6 race, when you are focusing in on one, I think it is quite
7 different than when you are running as one of 13, and I
8 truly don't believe that the people really --

9 JUDGE WOOD: Well, the part that worries
10 me and I think it may worry Judge Goldberg,
11 is the slate more important than the case
12 before this Court? The fact they have
13 this endorsement is more important than
14 whether we have multi or single member
15 districts?

16 A Well, of course, in a single member
17 district case, the D.C.R.C. would not have that strength.

18 JUDGE GOLDBERG: Say that again, please
19 sir.

20 A In a single member -- if we had single
21 member districts, then the D.C.R.C. slate would make
22 little to no difference.

23 JUDGE GOLDBERG: You mean even though
24 they slated people in each of the districts?

25 A That's correct.

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2 JUDGE GOLDBERG: That is your
3 conclusion?

4 A Yes, sir.

5 JUDGE GOLDBERG: And their
6 effectiveness is only because they are
7 County-wide?

8 A Yes, sir.

9
10 CONTINUED RE-CROSS EXAMINATION

11
12 QUESTIONS BY MR. LUNA:

13
14 Q Now, I asked you that question earlier,
15 Mr. Weiser, and I understood you to give me a different
16 answer. Perhaps I obviously misunderstood you. My
17 question was, earlier, would, if we had single member
18 districts, would more liberal Democrats be inclined to
19 win and be elected than are inclined to win under the
20 County-wide district?

21 A At the present situation, there may
22 be two liberals in office. I would think under single
23 member districts, that number would increase.

24 Q Would increase?

25 A Yes, sir.

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2 Q So then your interest in asking
3 that single member districts be granted instead of
4 multi member districts, as distinguished from color of
5 the skin is so that more liberal Democrats can win than
6 can presently win? Isn't that correct?

7 A No, sir. As I pointed out, the D.C.R.G.
8 has slated and endorsed liberal candidates and has
9 opposed conservative candidates.

10 Q But you feel that more liberals would
11 win under a single member district than under the County-
12 wide district, don't you?

13 A I feel the whole political process would
14 open up and that slates wouldn't make any difference any
15 more.

16 Q Well, do you feel that more liberals
17 as you said a while ago, would be elected under the single
18 member districts?

19 A One result would be that more liberals
20 would be elected.

21 Q And you would like to see that, wouldn't
22 you, Mr. Weiser?

23 A Yes, sir, I would.

24 MR. LINA: Thank you.

25 JUDGE GOLDNER: I want to ask once

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once again, is it your testimony that on the single member districts, more Blacks would be elected than under the multi-system, forgetting the label, "liberal and conservative"?

A Yes, sir.

Q Mr. Weiser, if we -- if the Court permitted you to draw a map to attempt to elect Blacks and you were to gerrymander it so you put all of the Blacks in that you could get to elect the largest number of Blacks that could possibly be elected, how many, in your opinion, could be elected in Dallas County, based on race, and single member districts?

A That would assume that the -- that would assume that the Black community automatically votes for a Black candidate?

Q Yes.

JUDGE GOLDBERG: Well, make it the assumption you have made for us all morning, based on all of these charts you have prepared, and the block voting and so forth, and then respond to the question.

A I would expect under normal cutting of the districts that three would be -- that three Blacks

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2 would be elected.

3 Q Three Blacks would be elected under
4 single member districts, if cut up in that manner?

5 A No, sir. Under almost any cutting
6 up.

7 Q Now, aren't you also aware that at
8 least on the Democratic ticket, -- well, first, we get
9 three additional members of the Legislature this year
10 above what we had last year, from 15 members to 18 members,
11 is that right?

12 A Yes, sir.

13 Q And aren't you aware that long before
14 this lawsuit was ever filed, that the Democratic County
15 Chairman in Dallas County, had come out publicly
16 advocating the election of three Blacks in Dallas County?

17 A I was not aware of that, sir.

18 Q You were not aware of that?

19 A No, sir.

20 Q All right. Secondly, if three Blacks
21 are elected from Dallas County at large, and if those
22 same Blacks in Dallas County have the privilege of voting
23 for 15 other members of the Legislature so that we have
24 three Blacks, plus a voting interest in all of the 15
25 others, don't they have more effective representation

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2 than they would have if they had only three Blacks
3 and didn't vote for anybody else?

4 A No, sir. Because they depend either
5 upon your sayso in their getting the nomination or a
6 group such as the D.C.R.G. And it is absolutely
7 essential to get that endorsement before they are able
8 to win the election -- the nomination.

9 Q Wasn't Zan Holmes chosen by the Black
10 community before he was endorsed by anybody else?

11 A Well, sir, he was endorsed by the
12 D.C.R.G. That part, I do know about.

13 Q I know, and I made the motion and you
14 seconded it, but before all of that happened, didn't the
15 Black community recommend that he be the one that we
16 endorsed?

17 A Well, there was no primary election
18 to get him elected.

19 Q Thank you very much. Could you answer
20 the question?

21 A There was a meeting of Black leaders
22 who endorsed Zan Holmes, which led to his -- I assume,
23 to his naming by the D.C.R.G. Committee.

24 Q And you know that in order to be
25 effective, the Democratic party would have to follow that

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2 same process to get people in the Black community -- that
3 the Black community select in order to put them on the
4 ticket, or they wouldn't help the ticket, would they?

5 A I would disagree with that in the
6 case of Joseph Lockridge, because there the Black
7 community was not doing any picking.

8 Q Back to your endorsement by the D.C.R.G.,
9 do you know Joe Rich?

10 A Yes, sir.

11 Q He is former chairman of the D.C.R.G.?

12 A Yes, sir.

13 Q And in the 1970 election, did he and
14 a number of his friends, endorse the Republican who won;
15 Fred Adkins?

16 A I am really not aware of what he did
17 in that campaign.

18 Q Thank you, sir.

19 JUDGE JUSTICE: Is there redirect
20 examination?

21 MR. RICHARDS: Very brief.

22 REDIRECT EXAMINATION

23
24 QUESTIONS BY MR. RICHARDS:
25

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2 Q Mr. Weiser, briefly, why do you say
3 that the D.C.R.C. slate would dwindle in significance in
4 the event one had single member districts?

5 A Obviously the people in the area then
6 would direct their own affairs -- the people would pay
7 attention to who they were going to elect and those with
8 different interests would obviously elect different
9 candidates and here is where I feel that any type of --
10 almost any type of cutting up the County into single
11 member districts will result in approximately -- oh, say
12 half Republicans and half Democrats, and the half
13 Democrats, three will be those chosen by predominantly
14 Black areas, be they white or Black.

15 Q I think that answers my question. The
16 other side of the coin, I take it now, is that with the
17 ballot the size it is in Dallas County and 15 Legislative
18 races and very few contests, the bulk of the citizens are
19 not even familiar with the Legislative candidates in the
20 primary? Is that correct?

21 A That's correct.

22 MR. RICHARDS: May I approach, Your
23 Honor? I have one exhibit.

24 Q Mr. Weiser, I have marked as our exhibit
25 92, a slate card that was put out -- well, a slate card,

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2 and I will ask you if glancing at that, whether you
3 recognize that slate card?

4 A Yes, sir.

5 Q Do you recall when that was put out in
6 Dallas County?

7 A Well, since it has "Lockridge" on here,
8 for place 5, and Chrisman, -- let's see. This would be
9 for the May 7, 1966 primary.

10 Q All right. Joe Rich for County
11 Chairman? Is that correct?

12 A Yes. That's correct.

13 Q Is that the slate card to which you
14 referred to in your testimony when you talked about the
15 D.C.R.G. slating of Joe Lockridge as legislative candidate?

16 A Yes, sir.

17 Q You were County Democratic Secretary
18 at that time in 1966? Is that correct?

19 A Yes, sir.

20 Q I was Precinct Chairman at that time,
21 if you recall?

22 A Yes, sir.

23 Q Did all of us have, as you recall,
24 similar slate cards put out all across Dallas, urging the
25 support of Joe Rich and that slate of legislative candidates?

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2 in all of the white precincts from Dallas that you know
3 off?

4 A Yes, sir. This was widespread.

5 MR. RICHARDS: We would offer, then,
6 Plaintiff's Exhibit 92 into evidence.

7 JUDGE JUSTICE: Is there further cross
8 examination by you, Mr. Luma?

9 MR. LUMA: If you please, Your Honor.

10 RECROSS EXAMINATION

11
12 QUESTIONS BY MR. LUMA:

13
14 Q What you call the D.C.R.G. slate, the
15 Plaintiffs' Exhibit 92, it says it is the John Connally
16 team, instead of the D.C.R.G., doesn't it?

17 A Yes, sir. Other groups use this same
18 type of tactic to go with the winner.

19 Q Well, is there anything on this slate
20 that indicates that this card was put out by the D.C.R.G.?

21 A It is inconceivable to me that that
22 would have been counterfeited. It so looks like the card
23 I was describing and put out in all of the precincts,
24 including my own.

25 Q But the only reason you thought it was

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2 put out by the D.C.R.G. is --

3 A -- no, sir. The letter that went along
4 with it.

5 Q Because --

6 A -- is my particular precinct.

7 Q But there was nothing about D.C.R.G.
8 only the John Connally team? Right?

9 A Well, on the card.

10 Q Yes. Are you familiar with the Home
11 Rule Cities?

12 A No, sir.

13 Q The Legislative Delegation to the Home
14 Rule Cities?

15 A No, sir.

16 Q You are not familiar with it?

17 A No, sir.

18 Q I think I have one more question,
19 Isn't it true that in the Democratic primary that the --
20 some Black candidates support one -- I mean some Black
21 citizens support one ticket and other Black citizens
22 support another one?

23 A Yes, sir. For a number of the
24 legislative -- in fact, this is presented here.

25 Q So then since the Black citizens don't

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2 agree among themselves, as to what candidate should be
3 supported for the Legislature, if we had a single member
4 district then, those Black citizens who didn't agree with
5 the one who is elected, wouldn't have their point of view
6 represented, would they?

7 A That's correct.

8 Q And this happens all over the Black
9 community in Dallas County, does it not, Mr. Weiser;
10 that the Black community supports different candidates --
11 part of the Black community support one candidate in the
12 Democratic primary and another part of it supports a
13 different one, while other segments in very small numbers
14 will support the Republican?

15 A In Legislative campaigns, in contested
16 races in 1970, the lowest percentage of votes of any
17 candidate was 68.7 percent and it ran to 91 percent for
18 a particular candidate. They were remarkably overwhelming
19 in nature for a particular candidate and this pattern is
20 repeated throughout. There is a particular pattern when
21 candidates make an appeal to the Black community that is
22 answered by the vote.

23 Q All right. Now, in that one that had
24 68 percent, for instance, 68 percent of these citizens
25 in that precinct, voted in the Democratic primary for one

1 ReC. - Weiser

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2 candidate?

3 A Yes, s ir.

4 Q And the other 32 percent who voted,
5 voted for a different one?

6 A No, sir. For three others.

7 Q For three different ones?

8 A Yes, s ir.

9 Q So then, in that particular situation,
10 whether it is 32 percent of them or 10 percent or 20, if
11 it was a single member district, those who voted for
12 the losing candidate in the Black community would then
13 not be represented by a citizen or a representative of
14 their political choice, even though his skin might be
15 black?

16 A That's correct.

17 Q Thank you, sir.

18 JUDGE GOLDBERG: Anything further?

19 MR. CIRRY: No, sir.

20 MR. RICHARDS: No, sir.

21 JUDGE GOLDBERG: I would like to ask one
22 question, Mr. Weiser: assuming that there
23 is a wide spectrum of community of interest
24 in the Black community in a single member
25 -- projected single member district, would you

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2 also say that there is also some element
3 and some degree of community interest in
4 the Black community that spreads out into
5 the entire Dallas County situation?

6 A Yes, sir, there is.

7 JUDGE GOLDBERG: Would that be a
8 fair situation?

9 A Yes, sir.

10 JUDGE GOLDBERG: I don't want to
11 be unfair; I want to see if that is a
12 reasonable conclusion from what you have
13 testified?

14 A Yes, sir.

15 JUDGE GOLDBERG: Any other questions?

16 JUDGE JUSTICE: The Court will be
17 in recess for 10 minutes.

18 (Whereupon Court recessed at
19 11:03 P.M. to reconvene in
20 10 minutes).
21
22
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1 Direct Examination - McClesky

2 JUDGE JUSTICE: Please call your next witness.

3 MR. COLLINS: We would like to call Mr.

4 McClesky. My name is John Collins, Your Honor,
5 and Mr. Richards has gone to check on some of
6 our other witnesses at this time. We will now
7 call Dr. McClesky.

8 CLIFTON MCCLESKY,

9 called as a witness on behalf of the Plaintiff,
10 after having been duly sworn, testified on his
11 oath as follows:

12 DIRECT EXAMINATION

13 Questions by Mr. Collins:

14 Q Would you state your full name, please?

15 A Clifton McClesky.

16 Q And, where do you live, sir?

17 A In Austin.

18 Q And, what is your business or occupation?

19 A I am employed as a teacher at the

20 University of Texas at Austin.

21 Q And, what department do you teach in, please,
22 sir?

23 A The Department of Government.

24 Q Dr. McClesky, I would ask you briefly to
25

1 D. E. - McClesky

2 just describe your educational training and background
3 for the Court, please?

4 A I grew up in Texas. I attended the
5 University of Texas, graduated with a Bachelor's Degree
6 from here, took my Doctorate from Harvard University,
7 taught here for three years, taught six years at the
8 University of Houston and returned here five years ago,
9 and I have been continuously employed here since that
10 time.

11 Q And, within your area of specialty have
12 you had occasion to publish any books or articles of any
13 kind?

14 A I have written fairly extensively on
15 American politics, particularly politics here in Texas,
16 co-authored a couple of books written on that subject.
17 I have written one which is widely used as a college
18 textbook. I have written several articles as well,
19 touching in one way or another on Texas politics.

20 Q And, what is the name of this text, please,
21 sir?

22 A The Government and Politics of Texas.

23 Q All right, sir. And, I believe you have
24 co-authored another work primarily dealing with politics
25 in Texas, have you not, sir?

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2 A Yes. This is a book called Party and
3 Factional Divisions in Texas with Professor Surcher and
4 Holliday.

5 Q All right, sir. Dr. McClesky, at the
6 request of the plaintiffs in this lawsuit have you had
7 an occasion to make a comparative study with respect to
8 any minority groups and their access to the political
9 processes in the states of Texas and Indiana?

10 A Yes, sir. It seems to me that the
11 differences there are of four sorts. The State of
12 Indiana simply does not have the legacy of segregation,
13 slavery, racism and so on that this state has. Another
14 difference is social in nature. Minority groups in the
15 State of Indiana, generally speaking, and particularly
16 Black minorities, have higher socioeconomic status and
17 are thus better able to organize themselves to mobilize
18 themselves to defend their interest and to seek effective
19 representation. A third factor for it seems to me is the
20 difference in the rules of the game. In the State of
21 Indiana there is no double primary, there is no majority
22 requirement and there is no place system in legislative
23 contest; that does make a difference.

24 JUDGE JUSTICE: There is no what?

25 A No place system. The top five or ten or

1 D. E. - McClesky

2 whatever man in a given district will win regardless of
3 whether there is any-- Well, there is no place design-
4 nation. The fourth factor, it seems to me, is the
5 political context. Indiana is a competitive state with
6 pervasive and continuous party competition at almost
7 every level.

8 Q All right, Doctor.

9 A And, it is not true in Texas, obviously.

10 Q All right, sir. With respect to Texas,
11 can you tell the Court whether or not there are any
12 theoretical or historical reasons that tend to minimize
13 Black voters opportunities to participate in the
14 political process?

15 A I can see some reasons of both sorts.
16 If you will look at it from a standpoint of represen-
17 tational theory, it seems to me you can talk in terms
18 of basically two alternative ways in which a group may
19 seek to hold its representatives accountable or seek to
20 obtain representation. One is to be able to elect members
21 from that group to the representative assembly. Now,
22 this is almost impossible in Dallas County or in any
23 large multi-member district of that sort where the
24 minority is not large enough to have some kind of com-
25 manding presence. If it was thirty-five or forth per cent

1 D. E. - McClesky

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2 then I think it might be a different situation, but in
3 the case of Dallas County the Black minority there simply
4 does not have enough votes to be able to insure the
5 election of Black representatives to the legislature who
6 have been chosen from within that group by that group;
7 and that is an important condition. It is not only
8 important that the person be from the group for that
9 theory of accountability, but it is important that the
10 person be chosen by that group. Now, the alternative
11 model of representation accountability would be one
12 from which the group might, while it might not be able
13 to select one from within its ranks, nevertheless would
14 have sufficient power and influence over the election of,
15 so to speak, outsiders; that they would nevertheless be
16 quite attentive to, quite concerned with, quite responsive
17 to that group. But, in a large multi-member district
18 that is almost impossible to obtain, because there are
19 so many interests that have to be accommodated and because
20 there are so many obstacles in the way of the minority.
21 Obstacles in the terms of costs of campaigns, obstacles
22 in the terms of the prejudice that still exists against
23 the group, the rigidity of the existing alignments; all
24 of these things make it very difficult for the group to
25 get in and negotiate and play the kind of role and to

1 D. E. - McClesky

2 exert the kind of control over the elected representative
3 that that theory of accountability would seem to call for.
4 Now, if you look at the historical reasons, in the case
5 of Texas and Dallas County, in particular, you do have
6 the legacy that I eluded to earlier of slavery, racism,
7 of prejudice. These are declining, but they decline very
8 slowly. And, I don't think anyone who is familiar with
9 this state and with the Dallas community would argue
10 that there is no longer racial prejudice there. And,
11 this does get in the way of trying to achieve the kind
12 of coalition, trying to build the kind of majority, that
13 the democratic theory calls for. And, in addition to
14 that you have the problem, and this is another historical
15 dimension, you have the problem that the rules of the
16 game-- the political game in this state-- were fixed
17 and crystallized pretty much in the first half of the
18 20th century when Blacks were effectively and almost
19 entirely excluded from the political process. They had
20 very little influence-- I should say no influence-- over
21 the option of the dual primary system, for example, the
22 majority requirement, a place system, or if you drop down
23 to another level, at large city council elections or at
24 large school board elections. All of these things were
25 pretty well fixed in Texas before Blacks became effectively

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2 participants in terms of being able to register and vote.

3 Q Along that same line, Doctor, how long has
4 it been that the Negro and other minority groups have
5 actively participated in the Texas political process?

6 A I don't think it is at all an exaggeration
7 to say, for all practical purposes, that it is almost
8 entirely since World War II, and primarily since 1960.
9 The decade of the 60's really brought the unfolding of
10 participating on the part of Blacks; although some of
11 the opening wedges were developed immediately after
12 World War II.

13 Q With respect to your second model, I
14 believe, of representation, you described the electorate
15 as having an opportunity to more or less define the
16 bounds of acceptable conduct. Would that be a fair
17 summary of that second model of representation that
18 you mentioned?

19 A Well, the point I was trying to make there
20 is that in order for the group to have influence over the
21 elected representative it is going to be important that
22 they have some kind of veto power over his election or
23 some opportunity of his dis-election if he proves unsatis-
24 factory. And, this is simply so much harder to do in a
25 large multi-member district because the minority is in a

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submerged position; it doesn't have the visibility and it doesn't have the strength. And, what you end up with, I am afraid, is the creation of permanent minorities and permanent majorities. And, this is something that, well, Madison warned us about in the Federalist Papers-- about the danger of that situation. And, his situation was a fluid enough political process with shifting alignments so that there was always the prospect of putting together a winning coalition. And, in the Dallas context that is very very difficult.

Q Doctor, based on your experiences as a student of Texas politics, does the average voter have difficulty in remembering, say, the candidates in a large multi-member district?

A I don't think there is any question about that. Any person who votes in such a situation-- most people will illegally take a slate card of some sort to the polls with them. You find this happening in almost all of these areas because it is the only way the person can possibly make any sense out of that bad sheet balance. It is not just the average voter, I might add, who has trouble remembering all of these people.

JUDGE GOLDBERG: There isn't much difference in Indiana and Texas, is there?

1 D. E. - McClesky

2 A The difference, I suppose, is that the
3 system here in Texas, Dallas County, particularly, I
4 think involved a larger district. We are talking about
5 prospectively eighteen persons in this case, and I
6 think there were only about eight involved, wasn't it,
7 in the Indiana case; and the larger the number, obviously
8 the harder it is for the voter to keep track of, but, I
9 was thinking about the difficulty that not only average
10 voters but political leaders, as well, sometimes have.
11 I was present in the chamber of the Texas House of
12 Representatives at a committee meeting two years ago,
13 in 1969, when Representative Need from Dallas introduced
14 a bill, brought up the bill before a committee to require
15 single-member districts in Dallas. The Chairman of the
16 Democratic Executive Committee in Dallas County came
17 down to testify in opposition to this, and made a very
18 strong impassioned argument in terms of how these
19 fifteen representatives-- at that time all Democrats--
20 were all one big happy family and they worked together,
21 incorporated, and they knew the problems of Dallas, they
22 knew how to work with each other. And, all of this was
23 very fine until Representative Graves, who was on the
24 committee, asked Mr. Ridge if he could name those
25 fifteen representatives-- this is the Chairman of the

1 D. E. - McClesky

2 Democratic Executive Committee of Dallas County-- my
3 recollection is he got about five of them and had to
4 give up. He himself could not remember all of these
5 people. And, if he cannot remember, then surely it is
6 asking too much for the average voter to remember.

7 Q You mentioned something a moment ago about
8 illegal slate cards. What did you have reference to
9 there, Doctor?

10 A These are cards that are put out by various
11 candidate's organizations, which are basically cheat
12 sheets, which the voter may go into the polls and mark
13 his ballots and remembering his decisions that he may
14 have wanted to follow but he may not be able to remember
15 all of them. The law in Texas does prohibit the use of
16 such materials, and yet there is widespread violation of
17 this simply because the voters cannot get along without
18 it.

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2 BY MR. COLLINS:

3 Q You mentioned a moment ago the word
4 "fluidity" and about shifting alignments.

5 Do you know whether or not reapportionment
6 here in Texas has led to more responsive representation
7 on behalf of blacks and other minority groups?

8 A I think that is most clearly seen, if you
9 look at the past and don't attempt to judge what might
10 happen in the future, but if you look at the past few
11 years with respect to the Texas Senate, which is a single
12 member district arrangement, which has been badly mal-
13 apportioned, and the changes that have come about in the
14 Senate have helped to open up a lot of the old limitations
15 and to make it much easier for a wide variety of groups
16 to get some kind of representation in the political process.

17 I think this is absolutely crucial. We
18 have in this country probably as great a crisis in inter-
19 group relations as we have had since the 1960's, and if
20 we are going to expect our representative institutions
21 to be able to cope with that crisis, to resolve the
22 conflicts that are there, then we have got to get the
23 parties to that conflict into the representational pro-
24 cess.

25 Q Dr. McClesky, what in your judgment is

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necessary to insure full and effective participation of minorities in the Texas political process?

A Well, it seems to me that you have to think of this as a double-ended affair. You can think of full and effective participation, first of all, in terms of the opportunity to register and to vote, and this is, I think, quite properly the first priority that has been given, and so you can go back to the white primary cases, you can go back to voting rights cases and all of these are attempts to insure full participation in terms of access to the ballot box, but that is only one part of the process.

It is also important to get to that other end, that is to say, to deal with the representational system itself.

Now, the Supreme Court itself has recognized this, I think, in the Gomillion (phonetic) case, where the issue was not whether Negroes in Alabama could register and vote in that particular city, but rather whether or not the boundary lines would be drawn in such a way as to minimize the effectiveness of that participation, and the Court said, "That's unconstitutional," and I think what they were saying is basically what I am arguing, that you have to deal not only with access to the

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2 ballot box, but with the institutions, the representa-
3 tional procedures which can be used and which, in fact,
4 have had the effect of minimizing or excluding blacks
5 from the political process.

6 Q There has been some discussion here this
7 morning, Doctor, with respect to what happens to losers
8 in the various political systems.

9 Can you describe for the Court in your
10 judgment what happens to losers in, say, a multimember
11 district, as opposed to a losing party or interest group
12 in a single member district?

13 A I think there is a very important distinc-
14 tion there that is easy to lose track of. The loser in
15 a multimember district loses everywhere, across the whole
16 county, and this may lead, as I suggested, to the crea-
17 tion of permanent and hopeless minorities, people who have
18 no chance of ever achieving some kind of a coalition on
19 the winning side, but in a single member district those
20 who lose there may, nevertheless, find that some of their
21 interests are being represented by the winners in other
22 districts.

23 For example, the black who lives in
24 Garland, those blacks may not be able to elect one of
25 their own there, but if there are blacks in other parts

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2 of Dallas County who are able to do so, they can help to
3 protect their own, that is, the Garland interests.

4 Similarly, the upper class citizen who
5 happens to lose in a single member district may find it
6 possible to get some representation through the winners
7 in your other districts in the county, so it seems to me
8 quite a different thing to talk about the losers in single
9 member districts and to talk about the losers in a county-
10 wide multimember district of this size.

11 MR. COLLINS: We pass the witness,

12 Your Honor.

13 JUDGE JUSTICE: Are there other Plain-
14 tiffs' attorneys who desire to interrogate
15 this witness?

16 MR. GEE: I may have one or two ques-
17 tions, if I may, Your Honor.

18 JUDGE WOOD: You have to state your
19 name for the record.

20 MR. GEE: Yes, sir, I will. I am Tom
21 Gee, representing Dr. George Willeford.

CROSS-EXAMINATION

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1
2
3 BY MR. GEE:

4
5 Q Dr. McClesky, has your study of political
6 trends and activities extended in a general way to the
7 United States, rather than merely to Texas?

8 A Yes. I claim to have some competency in
9 American politics generally.

10 Q Would you be inclined to say that the
11 situation which you find in Texas is more similar to, say,
12 the situation which you would find in Alabama than to the
13 one which you find in Indiana?

14 A Oh, I think quite clearly.

15 Q Dr. McClesky, do you feel that there is an
16 identifiable area in Dallas County which might be char-
17 acterized as a Republican voting area?

18 A I understand that to be the case, yes.

19 Q All right, sir.

20 A I understand by Republican voting a pattern
21 of consistent support for the candidates of that party.

22 Q Yes, sir. What I understand by it is when
23 they vote for the Republicans.

24 All right, sir. I don't have in mind any
25 technical term. And they do it over and over again?

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2 A Yes.

3 Q And you can locate them on the map roughly?

4 A Yes, and there are varying degrees of con-
5 centration, obviously, but you can, indeed, locate these
6 areas and you can predict pretty well, as every politician
7 knows from one election to another about what the vote will
8 be in those respective areas.

9 Q Very quickly, Doctor, I have three general
10 questions.

11 As you doubtless know, a selection was made
12 of single member districts for Harris County and one
13 general conglomerate multimember district for Dallas County.

14 Can you think of any characteristics which
15 are so different between the two counties, such as geo-
16 graphy or demography or whatever, other than just pure
17 politics, which would justify such a discrimination?

18 A I cannot think of any objective criterion
19 that would account for that difference.

20 Q Is it more expensive, Doctor, for a candi-
21 date to run a county-wide race, as is required in Dallas
22 County under the present dispensation, than would be for
23 him to run in a single member district legislatively?

24 A I don't think there would be any question
25 at all about that. If you are comparing a multimember race

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2 with a single member district race for the same type of
3 office, then you would expect that almost always the
4 multimember district is going to be a much more expensive
5 race, and the larger that district is, the greater the
6 expense is going to be.

7 Q He's going to have overkill, for example,
8 and he is going to have to pay for advertising and so
9 forth which will do him essentially no good?

10 A Right.

11 Q All right, sir. One last thing. You touched
12 on accountability earlier, and by accountability I mean the
13 whole flow of constituent to representative -- representa-
14 tive to constituent.

15 Would you tell the Court how the account-
16 ability factor is influenced by the choice of multimember
17 districting as against single member districting?

18 A Well, that seems to me a matter pretty much
19 basic arithmetic. One representative from a county with a
20 population of one million people, say, is going to be
21 able to give any one of those persons very, very little of
22 his time. He will be able to give somewhat more attention
23 to, have somewhat more concern with constituents in a
24 district of 74,000, and I think this is very important for
25 the concept of representation, the opportunity for

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2 individual citizens to have contact with, to interact with
3 their elected representatives, and the larger the district
4 the less likely that is.

5 Q And I suppose it runs the other way, too,
6 Doctor, doesn't it, that is, the representative has a
7 great deal more difficulty in being for what his constit-
8 uents want him to be for?

9 A Sure, the larger the district, the more
10 heterogeneous it is, and it becomes almost impossible with
11 the best of good faith on his part -- it becomes almost
12 impossible for him to serve all of his constituents, be-
13 cause he can't know.

14 Q Unless we could break him down into individual
15 percentiles, so that 17 percent of him would be for one
16 thing, representing those interests, which, of course, is
17 obvious impossible.

18 A No, there really isn't any way of doing it.

19 Q All right, sir. I suppose it is a fact,
20 isn't it, Doctor, that there are United States Senators
21 elected from areas, such as perhaps Alaska, who have to
22 approach a smaller constituency than a man who wants to
23 be elected to the Texas Legislature from Dallas County?

24 A Yes, indeed. There are several states in
25 which the members of the United States Senate have a much

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2 smaller constituency than does a member of the Texas House
3 of Representatives, which seems to me to be getting a
4 long way from the original notion that the lower House of
5 the State Representative -- the lower House of the State
6 Legislature was to be that body closest to the people.

7 Q And I suppose, Doctor, extrapolating from
8 what you have said already, that as the size of the multi-
9 member district increases, the number of the legislators
10 trying to represent all of the voters in the area increase,
11 the invidiousness which you have described of the multi-
12 member district also increases?

13 A I think so. The minority there is simply
14 going to be submarged that much more, the larger the
15 district.

16 MR. GEE: Thank you very much, Doctor.

17 MR. EASON: Nathan Eason from San
18 Antonio.

19
20 CROSS-EXAMINATION

21
22 BY MR. EASON:

23
24 Q Doctor, I simply want to qualify you on
25 your answers as regards to Bexar County in regards to

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2 multimember versus single member districts.

3 As I understand, you did testify the costs
4 in running in a multimember district would be greater than
5 in a single member district in Dallas County.

6 Would this also be true of Bexar County?

7 A Oh, I'm sure it would, though, since the
8 number of representatives is somewhat lower, the costs
9 would not be as disproportionate as in Dallas County, but
10 you would still find, I think quite certainly, that the
11 cost of running on a multimember basis is going to be far
12 in excess of what it would be for that same office in the
13 single member district.

14 Q Yes, sir. Now, the accountability situation
15 that you testified about, would this also be true in Bexar
16 County?

17 The personal representation of the single
18 member representative, he would be closer to his constitu-
19 ency in a single member district than he would in a multi-
20 member district?

21 A I think so. I think that would be true in
22 Bexar County, as well.

23 Q Yes, sir. Now, as I recall, you also testi-
24 fied that you knew of no objective criteria whereby Harris
25 County was given single member districts and Dallas County

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2 was given multimember districts. Is this true?

3 A That is true.

4 Q Would the same thing be true about Bexar
5 County?

6 A I believe so.

7 Q Yes, sir. Do you know, Professor McClesky,
8 whether or not Bexar County has an identifiable Republican
9 area?

10 A Yes, I believe that is the case, again,
11 understanding this to be areas in which people pretty
12 consistently support the nominees of the Republican Party
13 for President, Governor and Senator.

14 Q Yes, sir. Well, are you aware that in the
15 northeast corner of Bexar County Republicans have elected
16 a County Commissioner and Justice of the Peace?

17 A Yes, those being single member districts,
18 in effect.

19 Q Well, at least a concentrated area not
20 running across the county at large?

21 A Right.

22 MR. EASON: Thank you.

23 JUDGE JUSTICE: Mr. Idar?

24 MR. IDAR: Ed Idar, Jr.

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CROSS-EXAMINATION

BY MR. IDAR:

Q Dr. McClesky, you are testifying here in the Dallas portion of this lawsuit. My co-counsel from Dallas is not here, so I don't know to what extent you might have been asked to consider some of the issues we are particularly interested in.

I have observed your testimony closely, and it appears to relate by and large to the black minority. I am wondering whether or not you have made any study or have enough information to express an opinion as to the Mexican-American minority, and I would call to mind particularly in relation to that minority that in contrast to blacks, they do have in my estimation an additional burden or handicap, which is a language handicap.

With that in mind, are you able to enlighten this Court generally along the lines of the problems of the Mexican-American minority?

A Well, I should think that generally speaking the smaller the minority is, assuming that it, nevertheless, remains large enough to be significant, the smaller

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2 it is, the greater handicap it labors under in a multi-
3 member county-wide district for the simple reason that it
4 is going to be much harder for them to achieve any kind
5 of leverage in the political process, which means that it
6 is more likely that their interests are not going to be
7 articulated and represented.

8 Q What I had in mind particularly, for example,
9 you made some reference to the use of these slate cards
10 that the average citizen, even the best educated ones,
11 may have to use in the long ballot to try to remember
12 who they want to vote for, and how would that affect the
13 Mexican-American minority, having this language handicap?

14 A Well, obviously, if they are not able to
15 use slate cards, it would make it much more difficult for
16 them, because it is going to be harder for the person
17 who is not fluent in English to be able to remember all of
18 these candidates, or, for that matter, to remember which
19 offices he wants to vote for and which ones he does not.

20 (No omission here.)

1 C. E. - McClesky

2 Q Have you made any kind of study as to
3 whether this type of device that we are talking about,
4 this white card, and other devices that have been used
5 in Texas politics, lend themselves particularly to
6 fraudulent practices?

7 A Well, I think probably the law prohibiting
8 the use of such materials was a reformed measure that is
9 aimed at this problem, but what is so very interesting
10 to me is that the needs of the average uncorrupted
11 straightforward voter are so great that that provision
12 has, for all practical purposes, been ignored until you
13 have an election judge who wants to keep people out of
14 the polls, and I have seen that happen sometimes.

15 MR. IDAR: I believe that is all. Thank
16 you.

17 JUDGE JUSTICE: Anything further from the
18 Plaintiffs' attorney? The Defense may cross
19 examine.

20 MR. JAWORSKI: Yes, sir. I have just two
21 or three questions, may it please the Court.

22 JUDGE JUSTICE: Would you state your name
23 for the record, Mr. Jaworski?

24 MR. JAWORSKI: Leon Jaworski.
25

1 Cross Examination - McCl...

2 CROSS EXAMINATION

3 Questions by Mr. Jaworski:

4 Q Have you ever visited Marion County in
5 Indiana?

6 A No.

7 Q Have you ever made a study of Marion
8 County, Indiana?

9 A No. I am not concentrated on Marion
10 County. I have read some articles on Indiana politics,
11 generally.

12 Q Have you ever visited Indianapolis?

13 A Yes. I have been in Indianapolis.

14 Q Have you ever made a study of conditions in
15 Indianapolis?

16 A No, I have not.

17 Q Are you familiar with the fact that
18 Indianapolis has a very large Black ghetto?

19 A Yes, I am.

20 Q Nothing like it in the State of Texas, is
21 there?

22 A Well, it depends on what you mean by "nothing
23 like it".

24 Q Well, is there any ghetto-- Black ghetto of

1 C. E. - McClesky

2 the size that Indianapolis has, in the State of Texas
3 anywhere?

4 A Well, I think if you understand by "ghetto",
5 an area by which people are poor and uneducated and
6 living in substandard housing--

7 Q Talking about a Black ghetto, yes, sir.

8 A Yes, indeed.

9 Q Where?

10 A Houston and Dallas.

11 Q Where in Houston?

12 A In the area north of the downtown area.

13 I can't remember whether that is the old third ward
14 or fifth ward. I always get them mixed up.

15 Q How large is the Black ghetto in Indianapolis?

16 A I am sorry. I don't recall the exact
17 figure.

18 Q How do you arrive at the conclusion that
19 Dallas or Houston has that large a Black ghetto?

20 A I know that those cities are larger cities
21 than Indianapolis and I know that the percentage of the
22 Black population is sizable in both of those cities. I
23 have been in both of those cities and I have seen those
24 areas and therefore, I think when you ask me is there
25 anything comparable, I think there is.

1 C. E. - McClesky

2 Q Well, what is the size of the Black popu-
3 lation in the Black ghetto in Indianapolis?

4 A I cannot give you the exact figure.

5 Q You can't even come close to it, can you,
6 Doctor?

7 A No. I probably cannot, because it depends,
8 in part, on how you define "ghetto", in terms of the
9 standards that you employ. If we take the standard that
10 we used in the Chavis case, you come up with one set of
11 figures and if you use the standard of someone else, you
12 come up with another set of figures.

13 Q Suppose we use the standards that were
14 employed in the Chavis case, now that you have mentioned
15 the Chavis case. What is the size of the Black ghetto?

16 A I don't recall in that case any mention of
17 the exact numbers of the people involved.

18 C You have undertaken to give testimony about
19 conditions that exist in the Indiana as compared with the
20 conditions that exist in Texas, have you not?

21 A Yes.

22 Q But you are not prepared to tell this Court
23 about the conditions that exist in Marion County?

24 A No, I am not.

25 Q And the Chavis case dealt with Marion County?

1 C. E. -McClesky

2 A As I read the Chavis case, it deals as well
3 with the State of Indiana.

4 Q But it dealt particularly with Marion
5 County and the Black ghetto in Indianapolis, did it not?

6 A Yes, it did that.

7 Q Now you are not a lawyer, are not?

8 A No, I am not.

9 Q Have you ever studied law?

10 A No. If you mean by that have I been in
11 law school, the answer is no.

12 Q Well, you had spoken of what the law was
13 in Texas at one point and you also spoke of the Gomillion
14 case that was cited by the United States Supreme Court,
15 and I thought perhaps you had some education in law.

16 A As part of my training, graduate training,
17 I did work in the study of constitutional law, including
18 a seminar with Professor Southerland at Harvard in the
19 Law School.

20 Q But you are not a law graduate?

21 A No, I am not.

22 Q Nor have you pursued legal studies?

23 A No.

24 Q All right, sir. Do you know whether or
25 not Indiana has home rule statutes similar to those in

1 C. E. - McClesky

2 Texas pertaining to home rule?

3 A I think it has.

4 Q Do you know it to be a fact?

5 A I don't know it to be a fact, but I know
6 that most states do have it and I believe Indiana is
7 one of those, but I cannot say with certainty.

8 Q You just assume it because most states do?

9 A Because I have a general impression.

10 Q You also made some comment with respect
11 to the similarity of conditions in Alabama and Texas.

12 A Yes.

13 Q Have you made a study of the conditions
14 existing in Alabama?

15 A I think I know something about the State
16 of Alabama.

17 Q No. I asked you have you made a study
18 of it?

19 A Yes. If you mean by that have I read
20 and have I thought about it and have I explored that,
21 yes, I have.

22 Q Have you visited Alabama and made a study
23 so that you can speak of it of your own personal
24 knowledge, sir?

25 A Sir, you understand that a scholar does not

1 C. E. - McClesky

2 necessarily have to visit an area to make a study of it.

3 Q I am addressing you as a witness, at the
4 moment, sir, and all I am asking you is if you have made
5 a study of it?

6 A I am testifying as a scholar and I am
7 testifying that I have read extensively from literature
8 concerning the politics.

9 Q Do you mind answering my question, sir?
10 Have you visited Alabama and have you made a study?

11 A No, I have not, to make a study.

12 MR. JAWORSKI: Thank you.

13 CROSS EXAMINATION

14 Questions by Mr. Jaworski

15
16 Q How long have you been in this courtroom
17 this morning? By that, I mean were you here when the
18 witness testified immediately preceeding you?

19 A I caught part of that, but not all of it.

20 Q All right, sir. Have you ever participated
21 in a political campaign in Dallas County?

22 A No, sir.

23 Q Have you ever lived there?

24 A No, sir.

25 Q Well, I understood you to say earlier

1 C. E. - McClesky

2 I am not that might indicate some prospects in that
3 direction, but if you look at the history of Dallas
4 County elections, I see no reason to make that kind of
5 prediction.

6 Q Let's look at the future, based on the
7 scholarly studies you have done. Would it be reasonable
8 to assume that as many as three Blacks would be elected
9 out of eighteen in Dallas County, if the elections are
10 at large?

11 A If you mean could I imagine it, the answer
12 is yes. I could imagine only one or I could imagine
13 none, if for that matter.

14 Q But it would be a reasonable assumption?

15 A That's right. It is not unreasonable.

16 Q Now, if the Black community-- well, if the
17 Blacks are elected on the ticket, Doctor, there would be
18 no reason for a political party to want to have a Black
19 on a ticket who did not have support of the Black
20 community, would there?

21 A Well, that is not necessarily the case,
22 because Blacks will give different degrees of support
23 from that community. There are some Blacks who could
24 come out of the Black community with let's say one hundred
25 per cent, virtually, and there are some that could come out

1 C. E. - McClesky

2 of there with sixty-eight per cent and the rest of the
3 White community might prefer to have that Black come out
4 of there with sixty-eight per cent because he is more
5 acceptable to them.
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Cross - McClosky

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Q Have you ever lived in Dallas County?

A No.

Q What is the longest period of time you have ever spent there?

A Oh, probably two weeks.

Q Have you studied Dallas County politics?

A Yes. I think I can safely say that I have.

Q Have you made a scholarly study of Dallas County politics?

A Yes. I have in the sense that -- I incorporated materials in a larger work which dealt specifically with Dallas County.

Q How long ago?

A This was in 1964.

Q 1964?

A That that particular study was done, yes.

Q Now, in 1964 to day, wouldn't you say that there has been such great change in politics in Dallas County that what you learned prior to '64 is not even relevant any longer?

A No, sir. That is not true.

Q Not true?

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1 Cross - McClesky

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2 A The person who dropped out of politics
3 in 1964 could come back to Dallas in 1972 and would not
4 be at all lost in that situation.

5 Q Had a Black ever been elected in 1964?

6 A No. But you have to understand that
7 that is not, in itself, any indication of a major
8 transformation in Dallas politics.

9 Q Had a Black ever been elected to the
10 City Council in the City of Dallas in 1964?

11 A No.

12 Q Had a Black ever been elected to the
13 School Board in the Dallas Independent School District
14 in 1964?

15 A No.

16 Q So then wouldn't you say that from that
17 time to date, there have been an increasing interest in
18 activity and involvement in the Black community in the
19 political affairs of Dallas County?

20 A I think that is quite true, but that
21 does not mean that any major transformation has taken
22 place.

23 Q Better, you told us earlier that if
24 we had single member districts, that a Black who was
25 elected in let's say, Oak Cliff, would adequately

Cress - McClasky

represent the interests of a Black who lived in Garland?

Did I understand you right?

A That is slightly an overstatement. I am saying that the Black who is in the losing area may achieve a degree of representation, nevertheless, in other areas, but I don't think it is the same by any means.

Q You don't think it is the same?

A No.

Q So in the single member districts, then if we had them, other than these three out of the 18, would the others have any representation as you see it, since no Black would be representing their area?

A They would have representation, indeed, in the sense that I just mentioned, that there may be a willingness on the part of these elected representatives from other areas to help try to protect their own interest.

Q And a County-wide District, in the one that is not elected county-wide, and the three that you told us, might be reasonably -- may reasonably -- in all reasonable probability, be elected next year --

A -- no. Reasonable probability is not my word.

Gross - McClosky

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Q Well, you agreed on that, didn't you?

A No. I didn't say "Reasonable probability". I said it is not a reasonable assumption.

Q Let's say assuming that three Blacks are elected in '72 or one in '72, is there -- on a County-wide basis, is there any reason why those Blacks would not reasonably represent the interests of Blacks all over the County?

A I think there is. These Blacks who are elected county-wide, are in fact, responsible to a much larger constituency which sets very real limits as to what they can do, both in terms of their workload and in terms of the range of interest they have to cope with.

Q Now, Doctor, when we elect -- now, if we isolate the Black population in single member districts and elect just Blacks from that area and some other color from some other area, aren't we polarizing the community?

A Well, please understand that I am not saying that the district lines should be drawn with an eye to isolate this group or that group. I am not testifying to that effect. What I am testifying to is this: that the multi-member district makes it a very, very difficult -- I think it is unreasonably difficult

Cress - McClosky

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for an interest such as -- I think it is unreasonably difficult for an interest such as the Black community has to achieve full and effective participation in the sense of not only access to the ballot box, but effective representation as well.

Q Do you have an opinion on whether or not that would tend to polarize the community, if elected from that kind of district, as distinguished from integrating the community when elected at large?

A I think it probably would not make that much difference. In fact, it is possible that it might help in this way; as you well know, campaigns have been run in Dallas County in the past in which candidates and groups, sometimes overtly and sometimes covertly, have made racist kind of appeals. Because the fate of the whole delegation was thought to turn on this. 15 seats were at stake. If single member districts are used so that the stakes are not so high, then there is less incentive. Why should that person, in an all-white district, worry himself very much about making racist kind of appeals. Why should he try to polarize. Why should he raise tension?

Q Do you know, Doctor, that percentage-wise, and according with their -- the relation to

1 Cross - McClasky

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2 population, that there are more Blacks registered in
3 Dallas County than whites?

4 A I think that difference is statis-
5 tically insignificant if you took count the age levels.

6 Q Well, is it true?

7 A If you took into account the age
8 levels, I think you find in fact, that there is no
9 difference.

10 Q Although it is your opinion that it is
11 insignificant that more Blacks, percentage-wise, are
12 registered than whites? Do you know for a fact that it
13 is true from the scholarly studies you have made from
14 Dallas County?

15 A Well, I have not examined this year
16 the registration in Dallas County, and I cannot say I
17 know this. Now, I understand that to be the thrust of
18 Mr. Weiser's testimony.

19 Q And do you know that also in Dallas
20 County the Blacks vote in about that same percentage?
21 In other words, a higher percentage of Blacks vote than
22 whites?

23 A Well, I think it is about the same and
24 perhaps, depending upon the race you are talking about --

25 Q -- wouldn't you say therefore, that

Cross - McGlosky

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that would lead to the conclusion that the Black population involves itself in the access to the political system in Dallas County in larger numbers than does the whites?

A No, sir. That is not true. Because it depends upon the other end of the process that I talked about. It talks about -- it depends upon how the representation on institutions are structured, and it is perfectly possible to have people voting all day long and the vote to be relatively useless, because of the way the rules of the game are rigged against them.

Q So the fact that one man gets one vote does not impress you?

A That is a necessary, but not efficient condition for an effective representation.

Q Doctor, in Harris County and in Dallas County, would you think that it is necessarily important that one -- let's assume that in Dallas County, a multi-member district did not show any discrimination, and that in Harris County, multi-member districts, did show discrimination. Then would you say there ought to be a choice?

A Would you explain to me what you mean by "showing discrimination"?

Crosse - McClesky

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Q Let me withdraw it and rephrase it and ask it another way: as we have said so often in the Green case --you are familiar with it, aren't you?

A Which case?

Q The Green case. The school case. Well, let me go ahead from that, then. Isn't it more important, rather than the name of the man, whether it is multi-member or single member -- isn't it more important that it work and does it work effectively without discrimination? Isn't that the important thing, Doctor?

A Oh, Doctor, I think so, and this is why I would not say that multi-member districts are everywhere and always going to result in discrimination. I think you do need to look at particular cases.

Q Fine.

A And I think if you look at Dallas County, that is what you find, that there is a consequence there, which results in prejudiced representation for the Black community.

Q When is the last time you have been in Dallas County?

A March.

Q In March of this year? Now, you have

1 Cross - McGleeky

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2 made no study of the political climate in Dallas County
3 since 1964?

4 A I try to keep abreast of what is going
5 on in Dallas County, but I have not written and published
6 material on Dallas County since that time.

7 Q Have you made a study of it since that
8 time?

9 A Yes, I have worked with figures from
10 Dallas County. I have read Dallas newspapers and so on,
11 so I have tried to keep abreast.

12 MR. LIMA: Thank you, sir.

1 C. E. - McClesky

2 MR. COLLINS: We have no further questions,
3 Your Honor.

4 JUDGE GOLDBERG: I may want to ask a
5 question. Is everyone finished?

6 QUESTIONS BY JUDGE GOLDBERG:

7
8 Q As a political scientist, you apparently
9 believe in the single-member district. What ingredients
10 should go into the determination of single-member
11 districts?

12 A The only form that I am prepared to offer
13 is the one that Congress itself laid down many years
14 ago: Compact, contiguous and equal.

15 Q Compact, contiguous and equal with respect
16 to what?

17 A To population.

18 Q You would not seek color representation,
19 economic representation, ghetto representation?

20 A I would assume that if the political
21 forces that are involved in drawing these lines are
22 themselves at all representative that there would be
23 some account taken of those forces.

24 JUDGE JUSTICE: Are you referring to
25 community of interest,, then?

1 C. R. - McClesky 329

2 A Yes. I think that is-- that would be
3 included.

4 BY JUDGE GOLDBERG:

5
6 Q Do you think, as a political scientist,
7 that districts should be selected so that a Black can
8 be elected?

9 A No, I don't.

10 JUDGE GOLDBERG: Thank you very much.

11 JUDGE JUSTICE: No further questions.

12 You may stand down, sir. Call your next
13 witness, please.

14 MR. COLLINS: Your Honor, I will have to
15 get Mr. Richards right outside; he has the next
16 witness out there, sir.

17 MR. McDANIEL: Your Honor, might I make an
18 inquiry while we have a moment's delay?

19 JUDGE GOLDBERG: Yes.

20 MR. McDANIEL: What is the deadline for
21 filing depositions? I have one witness in
22 San Antonio who goes to trial in Judge Spears
23 Court in the morning in a criminal case in which
24 they have had the jury picked all week and I
25 may have to take his testimony by deposition.

JUDGE JUSTICE: I think they were previously set at Wednesday evening; that is as far as the Plaintiffs are concerned. The Plaintiffs have, I believe, all day Wednesday, but insofar as the Defendants are concerned I believe they had the last two days of the trial. And, whatever length of time it took the transcribe those depositions-- As I recall, it was three or four days.

MR. McDANIEL: Yes, I recall that was the original understanding. I wanted to know if that was still in effect because we had some changes made.

JUDGE JUSTICE: Yes.

MR. McDANIEL: All right, fine.

MR. IDAR: May it please the Court, I am anticipating the Bexar County portion of this lawsuit will start probably this afternoon, Your Honor, and I am the attorney that is going to have to be involved in the prosecution of that aspect of the thing. I don't know that-- in this stage of the trial-- that I would be able to safeguard the interest of my people by having to concern myself about a proposed deposition--

JUDGE JUSTICE: I am sorry, would you come

forward?

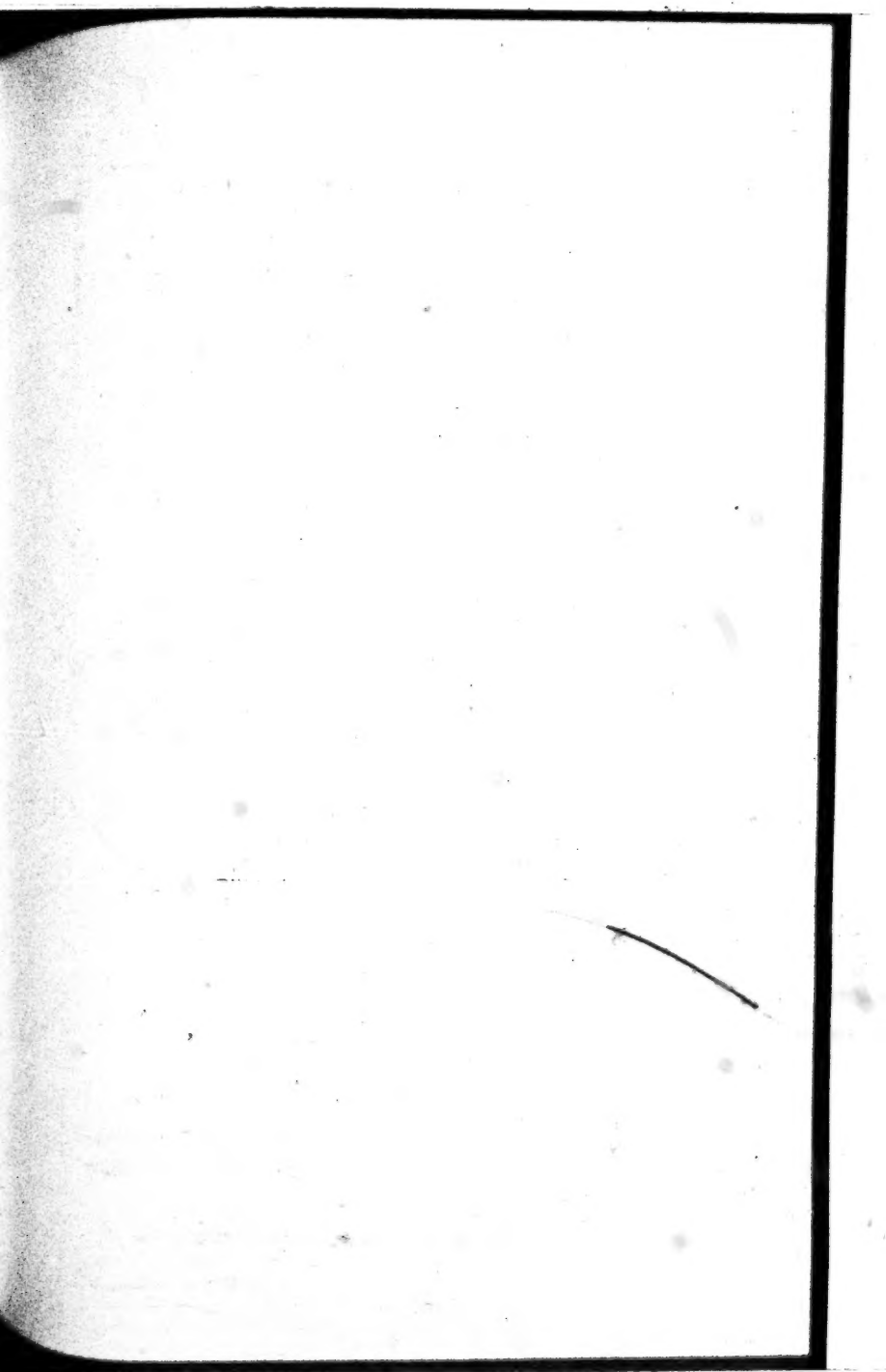
MR. IDAR: I am not so sure that I will be able to adequately represent the interest of my people by having to be concerned about the depositions they are going to take tomorrow. I might advise the Court that I think the witness he has in mind we discussed three or four days ago. And, it is only at this stage--

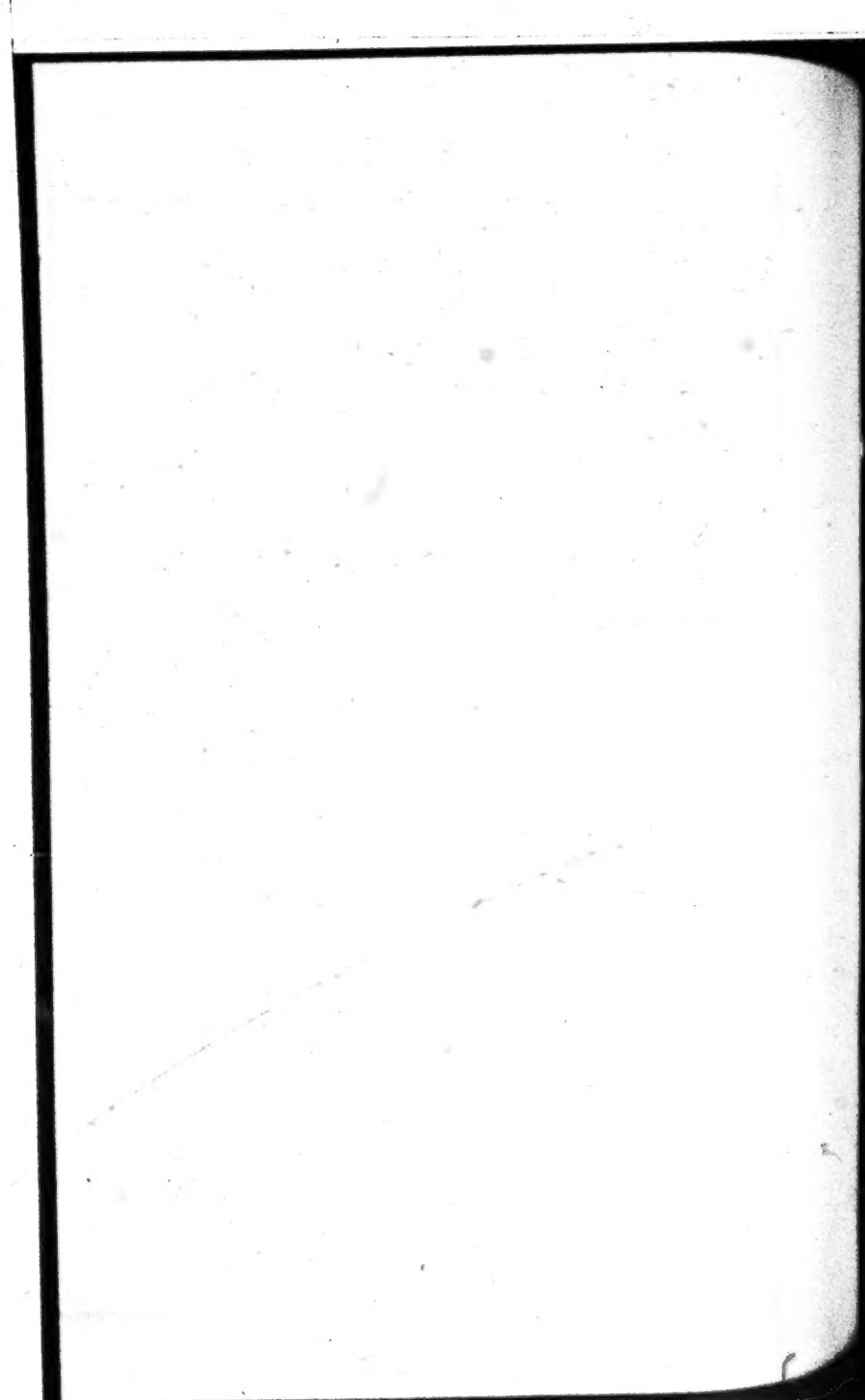
JUDGE JUSTICE: Let's find out the specifics about it. What witness are you referring to?

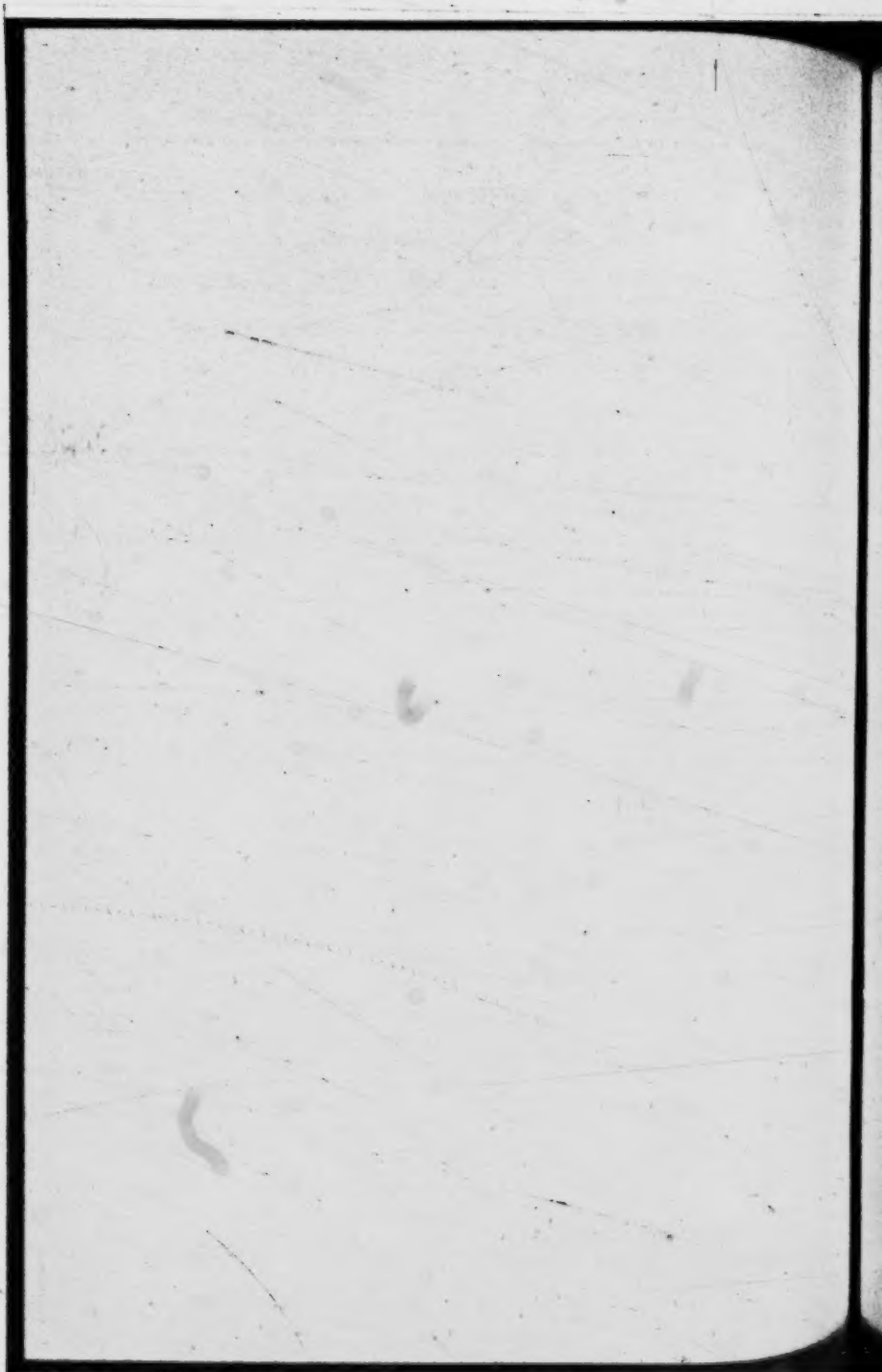
MR. McDANIEL: I am referring to Ray Barrera, but I don't think the problem counsel anticipates is going to be a problem. I anticipate handling the Bexar County problem myself, and if it is necessary to take Mr. Barrera's deposition rather than have him here as a live witness I would assume we would probably take that deposition on Friday, of necessity, because he expects to be in trial tomorrow and Thursday. I would also anticipate that--

JUDGE WOOD: I will talk to Judge Spears and see if we can't get Mr. Barrera here. But Friday, I think is too late, counsel.

MR. McDANIEL: We will be delighted to have him here.







JUDGE WOOD: We are trying to finish this case, you understand, by tomorrow or sometime Thursday noon. Friday would be too late. I will talk to Judge Spears and see if we can't make arrangements to have Mr. Barrera here. When would you like to have him here?

MR. McDANIEL: In the morning.

JUDGE WOOD: I will call Judge Spears and see if we can't have Mr. Barrera here in the morning.

JUDGE JUSTICE: Is that satisfactory, Mr. Idar?

MR. IDAR: Yes, sir.

MR. RICHARDS: I will call Senator Maury, please.

OSCAR MAURY,
a witness called by the plaintiff, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

Questions by Mr. Richards:

Q Can you give us your full name, please, sir?

A Oscar Maury.

1 D. E. - Mausy

2 Q Where do you reside, Mr. Mausy?

3 A At 1338 Acapulco Drive, Dallas, Texas.

4 Q How long have you been a resident of
5 Dallas?

6 A For twenty years.

7 Q You are currently the Senator from the 23rd
8 Senatorial District, is that correct?

9 A Yes.

10 Q From Dallas County?

11 A Yes.

12 Q And, when were you elected to that office?

13 A In 1966.

14 Q All right. So there will be no mistake,
15 you are a partisan in this issue of single-member--
16 multi-member districts is concerned?

17 A Yes, I am, Mr. Richards. I participated in
18 the filing of this case, I participated in the filing of
19 the Kilgarlin case in 1963, I participated through the
20 Kilgarlin case as counsel and I have long advocated single-
21 member districts through the courts and through the
22 political processes.

23 Q Your active participation as counsel in this
24 case, I think, came to a halt several weeks ago when you
25 were hospitalized for a brief time for a headache, is that

1 D. H. - Maury

2 correct?

3 A It was Christmas Eve that it came to a halt,
4 and I was hospitalized for five days.

5 Q Yes, sir. Just very briefly, give us some
6 background and political activities that predate your
7 becoming a Senator-- very briefly.

8 A I have been interested in politics all my
9 life. My mother was an election judge and precinct
10 chairman. And, as a child I handed out cards for candi-
11 dates. As a student at the University of Texas I was
12 active in the Young Democrats. I held office in student
13 government at the University of Texas Law School. I was
14 president of the Dallas County Young Democrats from 1954
15 to 1956. I was the National Committeeman for the Young
16 Democrats of Texas from 1954 to 1956. I was a candidate,
17 unsuccessfully, for national president of the Young
18 Democrats in 1959.

19 Q All right, sir.

20 A I was a Democratic precinct chairman from
21 1962 to 1966 in Dallas County, Texas.

22 Q All right. Your first race for public
23 office was a race for the State Senate in 1966, is that
24 correct?

25 A Yes, sir, that is correct.

1 D. E. - Maury

2 Q May I approach the witness? Senator, this
3 is in evidence as Plaintiffs' Exhibit 1; it is a census
4 tract map of Dallas County. The shaded precincts being
5 those that have been predominantly Black. Without
6 attempting to describe in detail your own senatorial
7 district, can you generally tell us which portion of the
8 county you represent?

9 A I represent this portion of the county that
10 is south and west of the Trinity River in Dallas County.
11 A majority of the areas that have been described as in
12 the shaded areas are in my senatorial district.

13 Q Are you generally familiar with the condition
14 of the Black citizens, the Black minority, that live in
15 your district in terms of economic level, housing and
16 other interests?

17 A Yes. I am by personal observation, by my
18 experience as a lawyer representing many people who live
19 there, in my capacity as State Senator trying to look
20 after the needs of that area.

21 Q All right. If you would, in rather general
22 terms, could you characterize for us the condition
23 generally of persons in this so-called Black area as
24 regards to certain income levels, housing and other
25 things of that nature?

1 D. E. - Maury

2 A The income level is substantially lower than
3 the White majority of Dallas County; the housing is
4 substantially inferior, by and large, to the housing of
5 the White majority in Dallas County; the public transpor-
6 tation is less available than it is in the White areas of
7 Dallas County; the crime rate is higher than it is in the
8 White areas of Dallas County; the streets are not as well
9 kept; there is less lighting. The general standard of
10 living is substantially lower. The economic level is
11 dramatically lower.

12 Q All right. What in your opinion, and based
13 on your observation, is the explanation for this lower--
14 for these conditions you have described?

15 A By and large, I think it is a carry-over
16 of the segregated system that for many years has
17 characterized Texas life. The Black citizen in Texas
18 for many years, by law, was segregated and not permitted
19 to participate either in the election system or in the
20 educational opportunities available to the other citizens
21 of this state. The Black community, by and large, has
22 been isolated, it has been segregated, it has been
23 discriminated against. It has not had the same oppor-
24 tunities of citizenship that we Whites have had.

25 Q And it your view, at least, this is reflected

D. E. - Maury

today in the economic conditions that affect the Black area-- or ghetto-- as it might be described in Dallas County?

A : Yes, it does. I don't think the same chance for economic advancement exists among the Black citizen of Dallas County today as exists among the White citizen because of his lack of educational opportunities in the past and because of his lack of ability to participate.

DE - Maury

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BY MR. RICHARDS:

Q Of course, we recognize, I am sure, that the black community of Dallas County obviously shares interests with the dominant white interests. There are common interests, aren't there?

A Certainly, the black citizens of Dallas County are just as interested in controlling the crime rate as the white citizens are, and they are just as interested in State Government, Federal Government, in world affairs. Certainly, there are many things that all of us share together.

Q But are there certain interests or certain characteristics of this black ghetto, if that is a description, which they suffer more intensely than is experienced by the white community?

A Yes, I think the black areas of Dallas County have needs which are peculiar to them, both peculiar in that they do not apply to a majority of the whites, and they are much more severe in black areas than they are in the white areas.

Q Are these in some of the areas that you have indicated---

A Basically the areas that I have indicated are in housing, educational opportunities, transportation, public

1 DE - Maury

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2 services, income levels.

3 Q Turning now to another matter, in your view
4 is it possible for state legislative candidates running
5 county-wide in the Democratic Primary in Dallas County
6 to receive the nomination of the party and ignore entirely
7 the interests of the black minority in their campaigns?

8 A The -- yes, sir, they have all done it by
9 and large, not all of them, but those in contested races
10 who have been anointed by the DCRG, the power group, have
11 by and large been successful with very rare exceptions.

12 The only exception that I can remember in a
13 contested primary race was Representative Dick Reed in 1968,
14 and that was because of a set of peculiar circumstances
15 that existed in that race.

16 Q Well, perhaps, since you have opened it up,
17 you might explain to us what you consider to be the pecu-
18 liar circumstances and explain the Dick Reed nomination.

19 A There was a three-way race for the nomina-
20 tion for the place that Representative Reed was seeking,
21 of the DCRG endorsed candidate, Mr. Reed and a third candi-
22 date.

23 When the unofficial tally was announced mid-
24 night election night, it indicated Mr. Reed and the third
25 candidate were in the runoff.

DE - Maury

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When the Canvassing Committee of the Democratic Executive Committee, which was made up of DCEC members, met Sunday to canvass and to certify the primary results, it was announced that Mr. Reed was not involved, but rather, the DCEC candidate was.

Then, in my capacity as Mr. Reed's lawyer, I obtained an order from the State District Court to open the machines and to conduct a recount.

That recount lasted for some 14 or 16 days, at the end of which it was demonstrated that Mr. Reed had, in fact, won a place in the runoff.

Q Did Mr. Reed, as a consequence of that, get substantial publicity in Dallas County?

A He got publicity that no political candidate could have paid for. He was on the front page of every newspaper for 14 or 16 days. He was on every television station, every radio station. It would have cost him half a million dollars to get as much publicity as he got.

Q The testimony we have today in part reflects a rather infrequent contest in the Democratic Primary for state legislative seats in Dallas County.

Do you have an opinion as to why this is true?

DE - Mausy

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A Yes, I do.

Q What would be that opinion?

A Largely it is because most independent candidates feel that if they cannot get the endorsement of the DCRG, they cannot be successful, and certainly, history bears that out.

The only way that they could be successful in bucking the DCRG would be to spend in my opinion between 150 to 200 thousand dollars to run for office, because you have got an electorate of half a million qualified voters. You have got over 300 precincts. You have got all the costs of campaigning. The candidate has the job of distinguishing himself as one candidate in what will now be 18 legislative seats, in carving out a place for himself in public life, to display his qualifications for office.

All of these things would cost a tremendous amount of money. Most people don't have it. That's the reason it hasn't been done.

Q How many -- if you recall -- I think the ballots are in evidence, but roughly, how many places -- races appear on the Democratic Primary ballot in Dallas County, for example?

A It would be over 60. You have a number of

DE - Mearry

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District Judges, County Court-at-Law Judges, 15 members of the house, one Congressman, one County Commissioner, one State Senator, one Constable, one Justice of the Peace, one Precinct Chairman.

Q My recollection is that the bulk of the Dallas County elections are still conducted on the old standup voting machines. Is that correct?

A Yes, sir, and this year they will all be conducted there. The Commissioners Court has just voted to go to that system exclusively.

Q As I recall, actually, it is not even possible now to list all the races in the Democratic Primary ballot across the machine on the front of it. Is that correct?

A That is correct, and there is a sample ballot that is in evidence as an exhibit that demonstrates that you cannot list all the races across the top of the machine.

Q Parenthetically, there is in evidence from the Defendant, Mr. Luna, certain cost figures with respect to candidates filing returns in the County Clerk's Office.

Have you had occasion to glance at those figures?

A Yes, I have.

1 DE - Maury

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2 Q First, state whether or not most of those
3 figures were filed at a time when the statute did not
4 require candidates to report expenses on their behalf made
5 by others.

6 A That's correct. This exhibit shows 1966
7 expense reports of candidates in Dallas County. They
8 were not required to report what others spent in their
9 behalf. They were only required to report what they
10 spent themselves and what their designated campaign managers
11 spent at their direction and in their behalf.

12 Q I noticed that one of the people on that
13 list was Jim Collins, which reflects no expenditures what-
14 soever in his rather highly publicized race for Congress.
15 Is that correct?

16 A There are a number of instances on this
17 exhibit that I find -- I am sure they accurately reflect
18 what was filed with the County Clerk's Office. I have no
19 question---.

20 Q Right, but without going into detail on it,
21 you state that it does not accurately reflect the total
22 expenditures that were made in those races?

23 A I know it is not totally accurate, because
24 Congressman Collins listed no expenditure whatever, and I
25 know he had to pay a filing fee.

DH - Maury

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Pat Robinson lists no expenses whatever, and I know he had to pay a filing fee.

Q No further on that then.

Now, is there in your view -- well, first, I asked you a moment ago whether you felt a candidate running county-wide in the Democratic Primary could afford to ignore -- for the Legislature -- could afford to ignore the interests of the black minority.

Would the same be true, say, in your Senatorial District? Do you feel that a candidate running in that district could safely ignore the interests of the black minority?

A No, I think not. When I first ran for the Senate in 1966, approximately 26 percent of the population of my district was black.

In 1970 when I ran for re-election, it was approximately 30 percent, and that's a substantial portion. No candidate should ignore any portion of the district he runs from, but it is much more significant there.

Q All right, but is there functionally in your view or in your opinion any difference between the race for a senatorial district in less than county-wide and a county-wide race for the Democratic legislator's seat?

A Yes, there is. I think the smaller the area

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the smaller the number of people involved, the better the candidate can know the needs of that area and can better respond to those needs by articulating his position on those needs.

Q What about the voters themselves?

A The voter can better become acquainted with the position of the candidate, because the candidate is more visible to him. The candidate is more accessible to the voter, and the voter is more accessible to the candidate.

Q Now, Senator Maury, would you turn with me now for a minute or two to another question, and that is, somewhat the existence of racial discrimination against Negroes in Dallas, both at the time you came to Dallas and as you see it today.

Could you describe just in general terms the prevalence of it or the absence maybe?

A I came to Dallas as a graduate of the University of Texas Law School in January of 1952, at which time segregation was still the law and was still completely practiced in all phases of life in Dallas, and there has been improvement since then, because of the Supreme Court opinion knocking out segregation in various areas, in education, public accommodations and other areas.

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Obviously, it has improved, but there is still segregation practiced today in Dallas County, Texas.

Q Just turning your attention to one matter here, do you remember that the Dallas County Jail, for example, up until at least or a year and a half ago still had different black and white visiting days?

A My recollection is from visiting clients. It was about a year and a half ago that that sign came down. You could only visit black prisoners on certain days and white prisoners on other days.

Q There are vestiges still remaining of the Old South. Is that correct, in Dallas?

A Very definitely in Dallas. It was only recently the colored and white signs were taken down from the water fountains and restrooms in the Dallas County Courthouse.

Q All right, sir. During your political activities in Dallas County did you ever encounter any resistance on the part of permitting poor Negroes to vote in the Democratic primary?

A Yes, sir. The most recent example I know of was in 1956.

Q Tell me about that.

A A friend of mine was running for Precinct

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Chairman and I was helping him. There were a number of Negro citizens who lived in this precinct, and whom we were trying to get to vote for him. They said they would love to, but they were not permitted to vote.

I couldn't believe this, so I told them to meet me at the polls at five minutes to 7:00 on Election Day and we would see about it, that I would be the first voter and they could be the second.

I was permitted to vote, but the Election Judge did not permit them to vote.

I then had to go and get the Sheriff's Office to come out and inform the Election Judge that black people were now allowed to vote, as well as white people in the Democratic Primary.

Q That was in 1956?

A Yes, sir.

MR. LUNA: Please the Court, we had an agreement in the Pretrial Order that no party was going to offer any evidence that anybody had attempted to keep anybody from voting in Dallas County. We object to this. It is in violation of that order, and further, it is the rankest of hearsay.

Q Well, you were present then, were you not?

1 DE - Maury

2 A Yes, I was present.

3 MR. RICHARDS: So, it is not hearsay.

4 JUDGE JUSTICE: I recall there seems to
5 have been some kind of stipulation to that
6 effect.

7 MR. RICHARDS: "In the recent past,"
8 I think were the words of the stipulation,
9 and I guess I may have---.

10 JUDGE GOLDBERG: Clearly, it is not
11 overly relevant to the ultimate issues in
12 this case. '56 has been a long, long time
13 ago.

14 Q Senator Maury, if you would for a moment,
15 turn now to the Democratic Committee for Responsible Govern-
16 ment. Are you generally familiar with its operations?

17 A Yes, sir, I certainly am.

18 Q Were you present here in the courtroom
19 when Mr. Weiser testified earlier this morning?

20 A Yes, sir.

21 Q Has it been your observation that this organ-
22 ization, at least, as matters now stand in Dallas County
23 dominates the nomination of legislative candidates in the
24 Democratic Primary?

25 A They do these county-wide. They don't those

1 DE - Maury

2 in the senatorial districts. They have fought me every
3 time I have run, as they fought Senator McKool in the
4 other district and Senator Harris in the 3rd District.

5 Q And you have observed as a political person
6 in Dallas County, in your view has the hostility of the
7 white majority in Dallas County toward black interests
8 that was manifested in segregation in the schools, churches
9 and housing been eliminated?

10 A It has not been eliminated.

11 Q You could still consider it to be a force
12 in Dallas County politics?

13 A Yes, it is. County-wide it can be the
14 deciding force.

15 Q You are familiar with the mailings that
16 were put out, for example, through the DCSG letterhead
17 in 1970 against candidates Brashear and Stehr?

18 A Yes, I received that at my home, which is
19 in a precinct that has no black voters.

20 Q Was that the mailing that had a picture of
21 Berland Brashear on it?

22 A That's all it had was Mr. Brashear's pic-
23 ture. In my opinion it was pure racism, because it showed
24 he was a black man. It didn't say a thing about his
25 qualifications. It just said, "Vote against him."

DE - Mansy

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Q Did it describe at all his political views?

A Nothing whatsoever but his picture.

Q Did it contrast -- did the mailing you got have a picture of his opponent on it?

A Yes, sir.

Q Showing him to be white?

A Yes, sir.

Q Have you seen other instances in recent years where appeals to this racial hostility of the white majority is still employed by the DCSG in its candidates?

A Yes, sir. It was used against me both in 1966 and 1970, and I have seen it used against other candidates in Dallas County.

Q Do you have some specific piece of literature in mind in that connection?

A Yes, I do. I have the mailing that was sent to every white precinct in my senatorial district just before the Democratic Primary in 1970.

(REPORTER'S NOTE: Document was marked for identification.)

MR. RICHARDS: Mr. Luna has not seen this before.

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(REPORTER'S NOTE: Counsel examine exhibit.)

MR. RICHARDS: I'm sorry, Your Honor.

I wasn't able to dig that up last night.

JUDGE JUSTICE: You move to amend the Pretrial Order?

MR. RICHARDS: To include what has now been marked as Plaintiffs' Exhibit 94.

JUDGE JUSTICE: All right, you may be permitted to amend the Pretrial Order.

Q I hand you what has been marked as Plaintiffs Exhibit 94. Is that the item to which you referred in your testimony a moment ago?

A Yes, sir, Plaintiffs' Exhibit 94, the best I can ascertain, was mailed to every registered voter in every white precinct in my senatorial district in the May, 1970, Democratic Primary.

Q It refers to Oscar Maury, Ed Polk and Ruth Jefferson.

Now, we know who you are, but who are Ed Polk and Ruth Jefferson?

A Ed Polk is former Director of Legal Services Project in Dallas, who has filed a number of class action

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lawsuits in behalf of poor blacks and other poor people in Dallas County, against county government, state government and various governmental institutions.

Q Was he prominently identified in the public mind with the interests of the poor black in Dallas County?

A Yes, he was very prominently identified at that time.

Mrs. Ruth Jefferson is a Negro lady who staged -- led a sit-in of Welfare mothers at the Dallas County Welfare Office and has been active in behalf of particularly Welfare recipients.

Q Had they been publicly associated in your campaign in any way?

A DCRG always seeks to associate them with me in the white precincts. They never seem to mail it to the black precincts, though.

Q In your opinion, Senator Maury, can an independent candidate -- by that I mean one running independent of the DCRG slate -- either black or for that matter white, who identifies with the interests of the black community, succeed county-wide and obtain a nomination in the Democratic Primary for a Representative seat?

A Not in my opinion except with rare exceptions, like when Dick Reed was nominated in '68 and then

1 DE - Maury
renominated in 1970 because of the record he had made.

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2 Q He was an incumbent, of course?

3 A He was an incumbent, but an independent
4 candidate running for an open office I don't think can.

5 MR. RICHARDS: That's all I have.

6 Thank you, sir.

7 JUDGE JUSTICE: Any other Plaintiffs'
8 attorneys desire to interrogate this wit-
9 ness?

10 MR. GEE: Your Honor, I would like to
11 ask a very few questions. I don't know what
12 other Plaintiffs may want to ask questions.

13 JUDGE JUSTICE: Court will be in recess
14 until 1:40.

15
16 (REPORTER'S NOTE: The Court then,
17 at 12:40 o'clock, P.M., January 4,
18 1972, recessed until 1:40 o'clock,
19 P.M., the same date, at which time
20 it reconvened.)

21
22 (No omission here.)
23
24
25

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(Court reconvened at 12:40 o'clock P.M., after which the following proceedings were had).

JUDGE JUSTICE: I believe you concluded your Direct Examination?

MR. RICHARDS: Yes. We have concluded, Your Honor.

JUDGE JUSTICE: Who is to cross examine?

MR. CUREY: We have a couple of questions, if it please the Court.

CROSS EXAMINATION

QUESTIONS BY MR. CUREY:

Q Senator Maury, how long have you been a proponent for single member districts in the House of Representatives?

A As far back as I can remember.

Q And you appeared before the Redistricting Board on October 6th in connection with this hearing on the House Apportionment Act, did you not?

A Yes, I did.

Q All right. And then you are an attorney

1 Cross - Maury

2 of record in this case, are you not, Senator Maury?

3 A Yes, sir. I think technically I have
4 been withdrawn from the record in view of my illness week
5 before last when it became questionable whether or not I
6 would be able to participate.

7 Q But you are not a party to this suit?

8 A No, sir.

9 MR. CUNY: Thank you.

10 CROSS EXAMINATION

11
12 QUESTIONS BY MR. LUNA:

13 Q Senator Maury, in Dallas County, as
14 State Senator, you represent perhaps the area, that is the
15 Senatorial district area, that has the largest number of
16 Blacks of either Senatorial District. Would that be
17 correct?

18 A I think that is correct, yes, sir.
19 It was in 1966, and I believe it is correct now, yes, sir.
20 As you know, the new district lines that are under attack
21 in this case went into effect January 1st. Assuming they
22 remain that way, I think it would be, yes, sir.

23 Q And Dallas County was formerly
24 represented in the Senate of Texas by a district that
25 covered the entire county? Is that right, sir?

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A Yes, sir.

Q And then Dallas County was broken down into three plus senatorial districts, with each of these districts being a single member district, including on a part of the County?

A Yes, sir.

Q Now, when we went from the county as a whole, as a single member district, to less than that county-wide Senatorial district, Senator Maury, was there a Black elected?

A In the Senate?

Q In any Senatorial district in Dallas County?

A Not in Dallas County, no, sir.

Q So what we actually wound up with was instead of one white Senator representing Dallas County, we wound up with three white Senators in Dallas County and one from another area that represented part of Dallas County? Is that correct, sir?

A Yes, sir.

Q So then obviously, breaking it down into single member districts, whether it is the Senate or House, does not mean necessarily that Blacks will be elected, does it?

1 Cross - Mouzy

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2 A That's correct.

3 Q And I would assume with some modesty,
4 we could say that you feel as a member of the Senate, that
5 you have adequately represented the Black interest,
6 haven't you, Senator?

7 A Mr. Lums, I have tried to represent
8 the interests of everyone in my district, Black and white,
9 alike, yes, sir.

10 Q So you wouldn't feel, based on your
11 expertise of many years in politics and government, that
12 by virtue of you being the Senator that is representing
13 all people, Black and white, and elected by all races,
14 that the Blacks are any less represented in your
15 Senatorial district than they would be if they had a
16 Black Senator?

17 A I would like to think that I represent
18 the majority and best interests of the majority of the
19 people of my district, yes, sir; Black or white. I make
20 no distinction.

21 Q But if we just limited it down to the
22 Black people in your district, don't you also feel, and
23 again I am not asking you to be immodest, but don't you
24 feel that it would be fair to say that you represent the
25 thinking of the majority also of the Black citizens?

Cress - Maury

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A Yes, sir.

Q Effectively?

A Yes, sir, I try to.

Q And also the whites?

A Yes, sir.

Q Senator, in the Democratic primary, how many -- percentage-wise, how many votes did you get and how many did your opponent get?

A In the primary of 1970?

Q Yes, sir.

A I believe I got 58 percent and he got 42 percent, I believe.

Q Now, those 42 percent that voted for your opponent were -- some were Black and some were white? Is that true?

A Yes, sir.

Q Now, by virtue of the fact that you were represented and that -- that you were elected, and their choice was not elected, would you feel that it necessarily follows then that those folks are not represented by a Senator of their choice?

A No, sir, because there was only 31,000 votes altogether cast in the primary and I received more than that in the general election in which I was elected.

Cross - Maury

against the Republican opponent. I assume all of the people who voted in the Democratic primary followed their pledge to vote for the member of the party which turned out to be me. Which I would have supported the nominee had it turned out to be my opponent.

Q Senator, there was some testimony earlier about an exhibit that I believe you, or somebody testified was sent out by what you termed the B.C.R.C.?

A Yes, sir.

Q Indicating it had a bearing on race?

A Yes, sir.

Q I believe that was Number 94.

A I don't have it before me.

Q No. It was not 94. It was the one with the picture on it.

MR. RICHARDS: It is here.

Q Do you recall the exhibit I am talking about?

A Yes, sir.

Q What was there about that exhibit?

Was it the picture of Berlin Beckham, a Black, that indicated to you that it had a racial tinge to it?

A As I recall, and of course, the exhibit will speak for itself, it had the picture and

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qualifications or lack of qualifications of all of the other three candidates in those two contested run-offs, but in Mr. Bashers instance, as I recall, it had only his picture. And the fact that it was mailed only to white precincts.

Q So, the fact that it didn't list qualifications for Mr. Bashers is what makes it, in your opinion, and the fact that it was mailed only to white precincts, is why you feel it had a racial tone to it?

A The fact that it did not have the same information as related to Mr. Bashers as it did all of the others.

Q Well, the fact it had his picture on it, you don't indicate that it had a racial tone to it, do you?

A Yes, sir, standing by itself, without his qualifications, because the other three candidates' pictures and qualifications were listed, as I recall.

Q All right. Let me hand you Defendants' Exhibit Number 53, which was put out by George Bush and has pictures on it, of him and Black people and see if you think that has a racial tone?

A I think there is some language in here that could be construed that way, yes, sir, where it

1 Cross - Maury

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2 says that 55 percent of the total Black vote polled in
3 Virginia went to Helton, who was the Republican candidate,
4 and it changed the State. I think Mr. Bush or whoever
5 put this out for Mr. Bush was making a direct appeal to
6 the Black voters to vote for Mr. Bush for the United
7 States Senate.

8 Q Senator, you mean if a person makes
9 an appeal to the Black voters to vote for him, that there-
10 fore it has a racial tone to it?

11 A I think what was sought to be done,
12 in my opinion, by this flyer, was to influence Black
13 voters to not vote the straight Democratic ticket; to
14 vote for this man. It says, "Vote for the man -- not
15 for the party. Don't vote the straight ticket." And it
16 is a fact in Dallas County, Texas, in the Black precincts,
17 in every general election, the Democratic nominees do
18 very well. Anywhere from 90 to 100 percent of the vote,
19 as you and I know.

20 Q Yes, sir. And we appreciate it, don't
21 we?

22 A We sure do.

23 Q Well, the fact that someone solicits
24 Black votes -- you solicit Black votes, don't you?

25 A Yes, sir. I solicit votes from everyone

1 Cress - Maury

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2 in my district.

3 Q And that doesn't mean it has a racial
4 tone to it, does it?

5 A No, sir.

6 Q But you think it does for Mr. Bush?

7 A I say it has language in here that
8 could be construed to be that kind of appeal, yes, sir.

9 Q All right, sir. Senator, of course,
10 sometimes one's supporters in politics, with their energy
11 and interest which we always try to get in politics, do
12 things that the candidate does not always approve of and
13 doesn't always control? Isn't that correct?

14 A Yes, sir, that happens many times.
15 The candidate doesn't even know about it.

16 Q As a matter of fact, isn't it true
17 that in your own election, in 1966, that somebody sent out
18 a precinct -- a letter signed by a then precinct chairman
19 named Thomas L. McKinney and he later denied that he sent
20 it out, and to refresh your memory, let me hand you this
21 Defendant's Exhibit Number 6, being the letter, and
22 Defendant's Exhibit Number 7, the Times-Herald in regard
23 to it.

24 A Yes, sir.

25 Q Now, although that went out all over

1 Cross - Maury

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2 your district, Senator, you had no way to keep whoever it
3 was from sending it out, did you?

4 A Well, in this particular instance, it
5 went only to one precinct, I believe. It was precinct 426
6 at that time.

7 Q Yes, sir.

8 A I was told that it was going to be
9 mailed out and that Mr. McKinney had authorized it, yes,
10 sir. Mr. Jones and Mr. McKinney both told me no one had
11 authorized it before it was mailed.

12 Q Now, in 1966, what was the date of
13 the Democratic primary, if you remember, approximately?

14 A May 2nd, I believe.

15 Q May 2nd?

16 A I think so.

1 **CS - Maury**

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2 **BY MR. LUMA:**

3 **Q On May 2nd, 1966, wasn't there again in**
4 **your race sent out by somebody a telegram urging people**
5 **to vote for you and purportedly signed by Barbara Jordan,**
6 **State Senator, J. Lockridge, Dallas, and Ralph W. Yar-**
7 **borough?**

8 **A There was a facsimile of a telegram sent**
9 **out, I believe, in the runoff, Mr. Luma, not in the first**
10 **primary.**

11 **Q In the runoff?**

12 **A I believe that is correct, yes, sir.**

13 **Q May 21st?**

14 **A June 6th, I believe, was the date of the**
15 **runoff.**

16 **Q Let me ask you to examine -- first, before**
17 **I ask you that -- Joe Lockridge was then a black member of**
18 **the Legislature, was he not?**

19 **A He had won the Democratic nomination in the**
20 **first primary. He had not yet been elected. He had a**
21 **Republican opponent.**

22 **Q I hand you Defendants' Exhibit No. 4,**
23 **Defendants' Exhibit No. 5, and ask you to tell us whether**
24 **or not No. 4 is a copy of that telegram without the**
25 **address of the person to whom it was sent being on it, and**

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deleting what has been written in there on pen, and if No. 5 is the news article following it that correctly portrays the position of Mr. Lockridge.

(REPORTER'S NOTE: Witness examines exhibit.)

A Yes, this is a reproduction of the telegram that was mailed in some precincts, and this is a reproduction of a story that appeared in the Dallas News on June 10.

Q Now, the J. Lockridge, as explained in the news article, was somebody else other than Joe, wasn't it?

A Yes, sir.

Q Wouldn't you think it was reasonable to assume that whoever sent out that telegram intended for recipients to believe that Joe Lockridge, the very popular black nominee of the Democratic Party, was endorsing your candidacy?

A I really don't know that I can answer that question as to what someone else's mental process was. I think like all other campaign material whoever did it did it for the purpose of trying to influence voters favorably.

1 CE - Maury

2 Q Yes, and again, of course, whoever sent it
3 out, there was no way that you could know they were going
4 to send it out?

5 A No, sir.

6 Q Senator, directing your attention to the
7 Plaintiffs' Exhibit No. 94, and it is the letter that is
8 at the heading -- Ruth Jefferson -- may I show you a copy
9 of it---?

10 A Yes.

11 Q ---and I will look at a copy at the same
12 time.

13 (REPORTER'S NOTE: Witness examines
14 exhibit.)
15

16 Q I believe earlier you identified that
17 letter as being sent by the DCRG?

18 A Yes, sir.

19 Q Now, DCRG does not in any way purport to
20 have sent that letter inasmuch as it is not on its letter-
21 head, not sent by any officer of the organization, is it?

22 A That is correct. It was in an envelope
23 that contained other DCRG material, including the slate
24 card.

25 Q And, Senator, isn't it a fact that the first

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2 name on there is Carrie E. Welch, who is a former City
3 Councilman, and never belonged to the DCRG in his life.

4 Isn't that true?

5 A He is a former City Councilman. I don't
6 know whether Mr. Welch belongs to the DCRG or not.

7 Q You have never known Mr. Welch to belong
8 to the DCRG, have you, sir?

9 A No, sir, I haven't.

10 Q How about Mr. Henry Grupe?

11 REPORTER: Henry who?

12 MR. LUNA: Henry Grupe, Jr., G-r-u-p-e.

13 A No, sir, I think that is Dr. Henry Grupe,
14 a dentist in DeSoto, and I don't know whether he belongs
15 or not.

16 Q Mr. D. A. Kinney is a banker from Cedar
17 Hill, is he not?

18 A Yes, sir.

19 Q And you have never known him to be a member
20 of the DCRG, have you?

21 A No, sir.

22 Q How about Mr. Gordon Yeargan?

23 A Mr. Yeargan is the President of an insurance
24 company. I don't know whether he belongs or not. I have
25 never seen the membership list.

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Q You have never known Mr. Gordon Yaargan either to be a member of the DCRG, have you, Senator?

A No, sir, never have.

Q Has the DCRG ever endorsed your candidacy?

A Not as far as I know.

Q Well, then, would it be fair to say that since these folks opposed you, as do the DCRG, you therefore assume that those who oppose you belong to the DCRG?

A No, sir, there are some people in DCRG who may support me, and there are some people who oppose me who are not in DCRG, I'm certain.

Q Yes, sir.

A I don't think they are mutually exclusive, is what I am trying to say.

Q Now, that comes down to my question, Senator.

We have an active and energetic primary in Dallas County, don't we?

A Yes, sir.

Q And then after that primary is over in most all cases, including yours, those members of the DCRG in very large numbers who -- that is, the ones who may have opposed you, helped elect you in November, didn't they?

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2 A As far as I know.

3 MR. LUNA: That's all, Senator. Thank
4 you.

5 JUDGE GOLDBERG: Any other questions?

6 MR. GEE: Very quickly, Your Honor, and
7 I appreciate the Court allowing me the oppor-
8 tunity -- Tom Gee.

9
10 CROSS-EXAMINATION

11
12 BY MR. GEE:

13
14 Q Senator, I wanted to ask you sort of the
15 range of questions which I asked the two expert witnesses.
16 I think you are qualified as an expert on Dallas politics.

17 Would you say that it is more expensive
18 to run a legislative campaign in the multimember district-
19 ing situation than it would be in a single member district
20 situation?

21 A For a legislative seat?

22 Q Yes, sir.

23 A Yes, I do think it would be more expensive.

24 Q And the reasons for that would be fairly
25 obvious, a larger number of people to contact?

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2 A A larger number of voters. Media becomes
3 more important -- television, radio, newspaper, that you
4 don't necessarily need in the district race that you would
5 need in a county race.

6 Q How about accountability, the accountability
7 upwards and downwards, for the representatives, sir? Do
8 you feel that it is better, worse or harder to establish
9 in the multimember situation?

10 A I feel that the representative is closest
11 to the people if it is a single member district, because I
12 think he is more in tune with what their needs are.

13 Q Do you feel, sir, in view of the greater
14 expense in campaigning for the multimember district that
15 this places a premium on those who are able to contribute
16 heavily to the candidate's campaign?

17 A Yes, I do.

18 Q In your opinion, sir -- well, I will ask you
19 this. Are you generally familiar with Harris County?

20 A I was born and raised in Harris County, but
21 I haven't lived there since 1943 when I joined the Navy.

22 Q Well, I will ask you this question and you
23 can tell me whether you can answer it or not.

24 Are you aware of any geographical or popula-
25 tion or other distinguishing features, other than political

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advantage to be gained, which would cause Dallas to be multimembered and Harris County to be single membered?

A I know of no reason for the distinction, other than political.

Q Is there in your judgment an identifiable Republican area in Dallas County in the sense in which we have been using the term, Senator?

A Yes, sir, there certainly is.

Q And it is up there in the north lying across the north of the town?

A Basically, County Commissioners Precinct No. 1 in Dallas County.

Q It votes that way over and over again?

A It has been doing it every general election since 1952 to my certain knowledge, yes, sir.

Q This voting machine that you can't get all the Democratic legislative candidates on, is that a standard type voting machine?

A Yes, it is the A.V.M. machine, American Voting Machine. It has got, as I recall -- I used to be an Election Judge, Precinct Chairman. As I remember there are 58 or 60 places across for races, and by the time you had all the state-wide races, county-wide races and all, there is not room enough on the ballot, which I think is

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2 indicated by an exhibit which is in evidence.

3 Q A machine produced for general use?

4 A Yes, sir.

5 MR. GEE: Thank you very much, Senator.

6 MR. LUNA: Please the Court, I thought
7 the Plaintiffs were through.

8 MR. EASON: I have just a few questions,
9 Your Honor -- Nathan Eason.

10
11 CROSS-EXAMINATION

12
13 BY MR. EASON:

14
15 Q Senator, I realize, of course, your expertise
16 is associated with Dallas County, but having been in poli-
17 tics like you have and in answering these general questions,
18 would you say that the cost of a single member legislative
19 race in Bexar County would be more in a multimember district
20 than it would in a single member district?

21 A Yes, I think the larger the area, the more
22 the cost.

23 Q Do you know whether or not Bexar County has
24 an identifiable Republican area?

25 A No, sir, I'm sorry, I don't.

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2 Q Do you feel the accountability of the con-
3 stituents or the candidate, the legislator, to his con-
4 stituents, taking into consideration his familiarity with the
5 local problems and so forth, is greater or better in a
6 single member district in Bexar County than in a multi-
7 member district?

8 A I would think the accountability of the
9 representative would be greater in any metropolitan county
10 in Texas under a single member district plan than it would
11 be under an at-large plan.

12 Q Yes, sir, and also using the objective
13 criteria such as -- well, do you know of any reason, any
14 practical, logical or objective reason why Harris County
15 would be awarded single member districts and Bexar awarded
16 multimember districts?

17 A No, sir, I don't.

18 MR. RASON: Thank you, sir.

19 JUDGE GOLDBERG: Anyone else have any
20 further questions?

21 MR. LUNA: These brought up a couple
22 more questions that we would like to ask, if
23 we might, Your Honor.
24
25

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CROSS-EXAMINATIONBY MR. LUNA:

Q Senator, in regard to the voting machines, single member districts is not going to (a) make any more room on the voting machines or (b) reduce the number of names or offices on the ballot in Dallas County, would it?

A Yes, sir, it will reduce it by 14 this year and 17 next year, because you only have one State Representative on each machine, like you only have one State Senator, rather than 15, as we had last year, or 18 as we will have this year, if the at-large system prevails.

Q Oh, you're talking about in that particular area?

A In any area.

Q All right.

A In any precinct, any voting machine.

Q All right. Now, what happens on the voting machine is that there has got to be more than one line in any event, hasn't there, across the voting machine?

A I'm sorry. I don't remember exactly how many places there are, but at one time, I know, if we had had single member districts in Dallas County, we could have

1 CX - Maury

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2 had everything across the top without having to go to the
3 second line down below. I don't know whether that is still
4 true or not.

5 Q I see. Now, you mentioned east. You ran in
6 an area that covers less than a third of the county popula-
7 tion. Is that right?

8 A Yes, sir.

9 Q Would it be fair to say that you spent more
10 than \$40,000.00 in your senatorial district race in Dallas
11 County to be elected to the Legislature as a Senator?

12 A Yes, sir, if you add the primary, the runoff
13 and the general election. I went through three contested
14 elections.

15 Q Do you know of any member of the House of
16 Representatives or candidate therefor with the possible
17 exception of Mr. Agnich, if he is an exception, whoever
18 spent that much county-wide?

19 A Yes, sir.

20 Q You do?

21 A Yes, sir, I have seen evidence that indicated
22 to me that they spent more than that.

23 Q Are you aware that the expense accounts that
24 are sworn under oath by the candidates in the County Clerk's
25 Office do not reflect that?

1 CH - Maury

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2 A I have examined exhibits, and that is correct.
3 What I have reference to is that their supporters or someone
4 was spending money on them for television and things of that
5 kind that cost a lot of money.

6 Q Of course, you are aware that the expense
7 account statute, which you helped pass, requires them to
8 report it, whether they spent it or somebody else spent it?

9 A Yes, sir, I had reference to before I was
10 elected to the Legislature.

11 Q Yes, sir, but in 1970 those expense accounts
12 that are filed in the County Clerk's Office in accordance
13 with the statute you helped pass, they are required to
14 report what was spent in their campaign, whether they spent
15 it or someone spent it for them, wasn't it?

16 A I believe that is correct, yes, sir.

17 Q And there is not a one that reflects that
18 they spent as much in a county-wide race as you spent in
19 less than a third of the county, is there?

20 A Well, again, the exhibit will speak for
21 itself. I haven't examined it from that viewpoint.

22 Q Senator, you mentioned that there was an
23 identifiable Republican area in Dallas County. By that do
24 you mean, as another witness said, that a Republican area
25 is an area where they voted for President on the Republican

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ticket in November?

A No, sir, I mean an identifiable area where every Republican candidate for every office got more votes than his Democratic opponent did in the general election in which he ran.

Q What areas did the Republican candidate for Governor get more votes than the Democratic candidate for Governor when John Connally was on the ticket?

A The northwest part of Dallas County.

Q Very few precincts, wasn't it?

A I will have to look at the record to see, but, as I recall, it was surprising to me how many Mr. Creighton carried against Mr. Connally.

Q So then, it depends on the race how they vote, doesn't it?

A No, sir, there are areas in precincts that every election every Republican nominee gets the majority over his Democratic opponent, regardless of how the county or the state turns out.

Q Now, those people in that area vote in 75 to 100 races in that area, don't they?

A I don't know how many---. You mean contested races?

Q Yes, sir.

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A It would vary, of course, from one year to the other. I would say---

Q More than 50 races?

A Not contested races in November. I don't ever remember having that many.

Q You are aware that last year Curtis Graves, one of the Plaintiffs in this case, in the last election headed up a state-wide campaign to elect certain state-wide Republicans, are you not?

A Yes, sir.

Q And for whom was he campaigning?

A As I recall, for the Republican nominee for Governor and for United States Senator, Mr. Eggers and Mr. Bush, if I remember correctly.

Q You don't say because of that, that he is a Republican, do you?

A I don't know what -- I know Curtis Graves. You would have to ask him. I assume he is a Democrat. He runs in the Democratic Primary, takes the same oath I do.

Q Yes. So then, those people in Dallas County who went to the Democratic Primary went there under a statute that you helped pass in 1967 that told how you select your party, didn't it?

A Yes, sir.

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2 Q And that statute provides that one selects
3 his party for that year by voting in a party primary and
4 having his voter registration certificate so stamped?

5 A Yes, sir.

6 Q Now, are there any precincts in Dallas
7 County where more folks join the Republican Party each
8 election by voting in their party primary than join the
9 Democratic Party by voting in its primary under the sta-
10 tute which you passed?

11 A Not in my senatorial district. There may
12 be some in North Dallas, but if so, I am not aware of it.

13 (No omission here.)
14
15
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25

1 Cross Examination - Maury

2 Questions by Mr. Luna:

3
4 Q Using that yardstick and the statutes that
5 you helped put through the legislature, is there any
6 identifiable Republican area in Dallas County of sufficient
7 size to compose a single-member district of the legislature?

8 A Yes, sir. There certainly is, because the
9 fact of the matter is there has never been a majority of
10 qualified voters in the county voting in two primaries
11 put together.

12 Q All right.

13 A The majority of the people don't participate
14 in the primary but they do vote in November.

15 Q So, they are independents, aren't they?

16 A They are Republican when they vote in
17 November for Republican candidates, as far as I am
18 concerned.

19 Q But, under the law you passed, the only way
20 you can be a Republican is going and voting in the
21 Republican primary, isn't it?

22 A No, sir.

23 Q Isn't that what you passed?

24 A There is a section in the election code
25 that I am familiar with; I know what you are referring to.

1 C. E. - Mausy

2 But, there are other ways a person can become a Republican.

3 Q Under Texas law, sir?

4 A Yes, sir, because I know of instances where
5 people voted in the Republican primary and then the
6 Democratic runoff in Dallas County. Do you remember?
7 I called them to your attention and tried to get the
8 Grand Jury to indict them.

9 Q You are talking about some act somebody
10 did illegally.

11 A So, in that instance that individual voter
12 would be a member of both the Republican and Democratic
13 parties.

14 Q So, there is no way, so far as you know,
15 for anybody to become a member of the Republican Party
16 or the Democratic Party without voting in its primary?

17 A Yes, sir. A person can become a member
18 of the Democratic Party-- and I can't speak for the
19 Republican Party-- by saying he wants to be a Democrat
20 and work for us and with our candidates-- as far as I am
21 concerned.

22 Q As far as you are concerned. But, how about
23 the statute you voted for and helped pass?

24 A But you see, Mr. Luna, the problem I have
25 with your question is it is now possible to register after

1 C. E. - Maury

2 the primaries are over and before the general election.
3 Those people have a right to vote and they have a right
4 to identify themselves--

5 Q Yes.

6 A --with a political party.

7 Q Yes. So, then, actually in Texas and in
8 Dallas County if one is an independent and doesn't go
9 to any primary the only choice he has, if there are no
10 write-in candidates and no independents filed, is to vote
11 for either the Republican candidate or the Democratic
12 candidate in the various races, isn't it?

13 A Yes.

14 Q So, we wind up in North Dallas with a lot
15 of ticket splitters.

16 A And we have got a lot of people that vote
17 the straight Republican ticket, the majority, in
18 Commissioner's Precinct 1.

19 Q In the precinct elections.

20 MR. LUNA: Thank you, Senator. I will not
21 belabor it any longer.

22 JUDGE GOLDBERG: Are there any questions
23 of Senator Maury?

24 MR. CURRY: No, sir.

25 JUDGE GOLDBERG: I have got some.

1 Redirect Examination - Maury

2 MR. RICHARDS: I want to clear up one
3 exhibit, Your Honor.

4 JUDGE GOLDBERG: Judge Justice has a few,
5 but we will let the lawyers exhaust themselves
6 first.

7 REDIRECT EXAMINATION8 Questions by Mr. Richards:

9
10 Q Senator, I simply want to clear up the
11 exhibit to which you have been referring that had the
12 photographs of Mr. Bashears and Mr. Stahr-- and we must
13 have misplaced it. Is it Plaintiffs' Exhibit Number 5
14 and the attachment to it that appears in the George
15 Bock deposition; is that the picture?

16 A Yes. I have reference to the picture
17 attached to it, not-- The individual letter that I
18 received was not this one signed by Mr. Webster and Mr.
19 Smith; it was signed by someone else.

20 Q But, you received a similar letter.

21 A A similar letter. And, this--

22 Q By "this" you mean the matter headed
23 "Democratic Committee for Responsible Government. Which
24 pair do you want to represent you in Austin?"

25 A Yes.

1 Redirect Examination - Maury

2 Q And, that is an attachment to Plaintiffs'
3 Exhibit Number 5 in the Bock deposition?

4 A Yes.

5 Q Now, that is the document you referred to?

6 A Yes, sir.

7 MR. RICHARDS: That is all. Thank you, Your
8 Honor.

9 QUESTIONS BY JUDGE JUSTICE:

10
11 Q Senator Maury, there has been a number of
12 references to the Dallas Committee for Responsible
13 Government, DCRG. And, since you have testified that they
14 consistently opposed you, I assume that you don't have--
15 you are not privy to all of the information regarding the
16 organization. But, can you tell the Court generally how
17 this committee is constituted and whom it represents, if
18 you know?

19 A Judge Justice, I was a member of the
20 Democratic Executive Committee myself from 1962 to 1966
21 as a precinct chairman, and it was during that period of
22 time that the DCRG was formed by a group of individuals
23 who were precinct chairmen of the Dallas County Democratic
24 Executive Committee. Since then I have not had personal
25 contact with it except through the mailings that they put

1 out and press releases and things of that kind. As I
2 understand it, they are a group of individual citizens,
3 some of whom are Democratic Party office holders and
4 some of whom are not, who seek to influence the nomination
5 of candidates for the Democratic Party, for nominees for
6 state representatives in Dallas County and who seek to
7 influence the elections of individual precinct chairmen,
8 and in some instances seek to influence the nomination
9 of other Democratic nominees for public office in Dallas
10 County.

11 JUDGE JUSTICE: I have no further questions.

12 QUESTIONS BY JUDGE GOLDBERG:

13
14 Q Senator Mausy, you appeared before the
15 Legislative Redistricting Board, did you not?

16 A Yes, sir.

17 Q You contended before that board, I assume,
18 that Dallas should have a single-member district?

19 A Yes, I did, Your Honor.

20 Q Did you suggest to the Board what the
21 criteria should be in carving out the senatorial districts?

22 A Yes, I did.

23 Q Please enumerate them?

24 A I asked the Board to follow what I feel
25 the law requires, as the Supreme Court and other Courts

1 have interpreted the Constitution. Number one, that the
2 district be equal in population; number two, that they
3 be as compact and contiguous as possible and number three,
4 that wherever possible the economic interest be recognized
5 and represented.

6 Q Did you feel that the third criteria, from
7 that you know as a senator, was satisfied in the Harris
8 County district?

9 A Your Honor, I have not looked at where the
10 lines are in the Harris County House redistricting, but
11 it seems to me in any urban county in Texas if you divide
12 the county into districts of equal population that
13 criteria will be satisfied unless there is gross gerry-
14 mandering-- which I cannot conceive of in the case of
15 Dallas County because, as Your Honor knows, Dallas County
16 is the most densely populated county in Texas and it
17 would be very difficult to gerrymander.

18 JUDGE WOOD: What about senatorial districts
19 in Harris County?

20 A I am sorry, sir, I am not familiar with
21 those lines either, Your Honor.

22 JUDGE WOOD: Would your reasoning be the
23 same with reference to senatorial districts and
24 large municipal communities the size of Harris
25 County-- that it would be almost impossible to

1 gerrymander?

2 A It would be approximately five times easier
3 in senatorial districts because you have got approximately
4 five times as many people; there being one hundred fifty
5 members in the House and thirty-one members in the Senate.

6 BY JUDGE GOLDBERG:

7
8 Q You do recognize, do you not, Senator, that
9 there are communities of interest that cut across whole
10 county lines?

11 A Yes, sir, I certainly do.

12 Q You also say here today that there are
13 issues which divide themselves into less than county
14 line interest?

15 A Yes.

16 Q And, do you think it is a legitimate
17 legislative chore to decide that one community of
18 interest should be the determinant in one area and not
19 in the other or must they be the same in all areas of
20 Texas?

21 A If I understand your question correctly,
22 Judge Goldberg, and I am not sure I do.

23 Q Well, I think you do.

24 A I am not sure. I think that a person can
25 represent the community of interest from which he is

1 elected although there might be conflict within it.

2 There is always differences of opinion with issues. I
3 do think there is a difference, for example, between a
4 south Texas senator representing a largely rural area,
5 totally rural ranching area, and the senatorial district
6 I represent on economic matters, on matters of taxation,
7 on matters of public education, on matters of public
8 transportation. I think that there are those kind of
9 differences that do exist because of the area-- if I
10 understood the question correctly, Judge Goldberg.

11 JUDGE GOLDBERG: Thank you very much.

12 JUDGE JUSTICE: Is there anything further?

13 JUDGE GOLDBERG: Anything else?

14 MR. IRVIN: At this time we would like to
15 call Dr. Conrad, Dr. Emmet Conrad.

16 JUDGE GOLDBERG: Identify yourself for the
17 record, please, sir.

18 MR. IRVIN: Walter Irvin. May it please
19 the Court, I am Walter Irvin and I represent
20 Plaintiffs' Intervenor Washington Et Al in the
21 Tyler case.

22 EMMET CONRAD,
23 a witness called by the Plaintiff, after having
24 been first duly cautioned and sworn to testify
25 the truth, the whole truth and nothing but the

1 D. E. - Conrad

2 truth, testified as follows:

3 DIRECT EXAMINATION

4 Questions by Mr. Irvin:

5
6 Q Would you state your name, please?

7 A Emit Conrad.

8 Q And, your address?

9 A It is 2003 Lanark Street, Dallas.

10 Q And, how long have you lived at that
11 address?

12 A For sixteen years.

13 Q For sixteen years?

14 A Not at that address. I lived at that address
15 about eleven years.

16 Q And, prior to that?

17 A I lived on Rose Lane five years.

18 Q And, is it fair to say, then, that you
19 have been in Dallas Texas sixteen years?

20 A Roughly sixteen years.

21 Q What is your occupation?

22 A I am a surgeon.

23 Q And, where is your office?

24 A On South Oakland, 4432 South Oakland.

25 Q And, what race of people live on Oakland?

1 D. E. - Conrad

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2 A In the segment where my office is?

3 Q Yes.

4 A Almost entirely Black.

5 Q Dr. Conrad, do you hold any other positions
6 in Dallas other than a surgeon, practicing surgeon? Are
7 you elected to any public office?

8 A I am elected to the Dallas Independent
9 School District, Place 3, Board of Trustees.

10 Q And, sir, when were you elected to that
11 office?

12 A In 1967. May 1st, I think it was, 1967.

13 Q Did you run as a part of a slate when
14 you sought that office-- did you identify yourself with
15 any particular party in your quest for that?

16 A Not party, but a slate called Lead. Lead
17 for Advancement in Education for Dallas.

18 Q Were you the only Black person running on
19 the Lead slate?

20 A Yes, the first one.

21 Q Now, you testified that you ran in May, on
22 May 7, 1967?

23 A No. I ran April 1st. My election was the
24 1st day of May on a Monday.

25 Q In 1967?

1 D. E. - Conrad

2 A Yes.

3 Q Prior to 1967 did you have any knowledge
4 of any other Blacks seeking-- and being successful-- a
5 seat on the Dallas Independent School Board?

6 A I knew of none that was successful. I
7 knew of several who had attempted to do it.

8 Q Are you familiar with a Dr. Hunter?

9 A Powell?

10 Q Dr. Hunter.

11 A Dr. Hunter?

12 Q Yes.

13 A Yes.

14 Q Isn't it a fact that he sought the election--

15 A Yes. Dr. Hunter had sought a seat the
16 previous year. In fact, I had aided in his campaign.
17 And, he ran without the endorsement of a slate, as an
18 independent. I think the Lead group identified him as
19 being intimately qualified.

20 Q Was Lead in existence in 1966?

21 A I think so.

22 Q And, did they seek to support-- I mean,
23 did Dr. Hunter seek the support of the Lead slate?

24 A As I recall, he sought everybody's support
25 and the Lead slate came out qualifying-- as his being

1 D. E. - Conrad

2 qualified-- but no particular endorsement. I think his
3 opponent was Jerry Wheat.

4 Q Was he Wheat?

5 A Yes.

6 Q Now, Dr. Conrad, in 1967 did any other
7 Black run for the School Board, either on the Lead slate
8 or any other slate?

9 A To my knowledge-- In 1967 or before 1967?

10 Q In 1967.

11 A Not to my knowledge. No, he was the only
12 one.

13 Q Isn't it a fact that a Dr.-- that Dr.-- that
14 a Mr. Joe Kervin also, sometime prior to the new School
15 Board election, served in the capacity as a member of
16 the Dallas Independent School District?

17 A Mr. Kervin was appointed to the School
18 Board to fill a vacancy of Mr. Wheat. And, this must
19 have been September or October of 1970.

20 Q And, is he now a member of the Board?

21 A No, he is not.

22 Q Did he run for re-election?

23 A Yes, he did. He ran in April of this year--
24 of '71-- the last election.

25 Q Did he run as a member of the Lead slate?

1 D. E. - Conrad

2 A Yes, he did.

3 Q Could you explain to the Court why he lost--
4 in your opinion why he lost?

5 A Well, there was several reasons, I felt.
6 He lost the Black vote-- the Black vote was split because
7 we had a second Black candidate, a Mrs. Gillam, who was
8 also intimately qualified as Mr. Kervin. The feeling in
9 the community was that this represented a backlash in the
10 city-- in the Independent School District-- because two
11 Blacks were on the Board.

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Q Let's --

A I have no figures, you know, why someone won or lost.

Q Did you carry the Black vote?

A Yes, I did.

Q Are you telling us, then, that the Lead slate, in effect, lost the election?

A Yes, the whole slate lost. The Black vote was split.

Q Except you?

A No, I wasn't in that last election.

Q Okay. Now, Dr. Hunter that you alluded to as having run for election in '66, what does Dr. Hunter

A Dr. Hunter is a minister, as well as a sociologist. He was an instructor out at Bishop College, and I think he is part-time out there now. And, he is part-time for the school district now, I understand. He is also a minister in the Presbyterian Church.

Q Okay. Now, about Mr. Karvin, do you know anything about his qualifications?

A Mr. Karvin had previously filed in the State Legislature under the Republican ticket some two years prior -- it must have been 1968. He was a college graduate, a businessman, formerly had been

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2 president of the Dallas Negro Chamber of Commerce and he
3 is engaged in several businesses, office supply company
4 and janitorial services in Dallas.

5 Q Now, is the Dallas Independent School
6 District confined, let's say, to the corporate limits
7 of Dallas?

8 A No.

9 Q Does it go out into some of the
10 satellite communities, including Dallas County?

11 A The smaller segment -- The district
12 lines are not contiguous with any other particular
13 governmental unit. Parts of Garland, I think, is in the
14 district line, a part of Farmer's Branch is in the district
15 line, a part of, oh, -- Seagoville, for instance, is
16 in it, and on the other side of the scale -- that is,
17 the other part of Dallas, that is in other district lines.

18 Q Are you familiar with the City within
19 Dallas called Highland Park and University Park?

20 A Yes, I am familiar with it.

21 Q Does the Dallas Independent School
22 District go around it?

23 A Yes. That is an island, both as a
24 school district and as a municipality.

25 Q Now, you have stated, Dr. Conrad, that

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2 you ran for the school board and was successful in 1967.
3 At the time that you ran, what issues did you -- let's
4 back up a minute. Strikethat. What prompted you to
5 seek the School Board on the Dallas Independent --

6 A Well, the previous year I had been
7 involved with trying to help Dr. Hunter get elected, and
8 we ran into all kinds of problems. The one first being
9 able to finance a district-wide campaign, particularly
10 on the resources from the Black community. The second
11 thing was a great concern for the condition of the schools
12 in the Black community, the lack of adequate free lunch
13 programs, the lack of quality educational programs that
14 would suit the prior community -- particularly in the
15 area of compensatory education. For instance, we did not
16 have an honor program at any Black school that year. We
17 had some 2,000 kids on the lunch program, which was
18 inadequately financed, and many of them were rotating.
19 In other words, if they were five kids in a family, they
20 were deemed economically deprived, and some weeks two of
21 them were on and then the next week three would be on, and
22 I don't know what happened to the two that would not be
23 on that particular week. This is the sort of thing --
24 So, I became involved with Dr. Hunter's campaign, and then
25 I joined local organization and was placed on the Board.

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2 Q Did you seek Laod support?

3 A No. I was part of a committee that
4 was sent out to seek candidates from the Place 5 area.

5 Q Place 5. Would you identify that?

6 A That is the south Oak Cliff area,
7 generally. It is an area that was rapidly changing from
8 an all-white community to an all-Black community, and, I
9 was part of a five-man committee, and we could not find
10 anybody that, number one, who was willing to offer them-
11 self to run; number two, that we thought had qualifications.
12 So, on that particular Sunday, the day before the filing,
13 it ended up on my doorstep, and the committee asked that
14 either my wife run or that I would run.

15 Q Dr. Hunter, would you tell us whether
16 this committee was composed -- was it biracial?

17 A No, it was all Black.

18 Q All Black?

19 A Because it was for Place 5.

20 Q Now, you were elected in 1967 again.
21 Now, what was the status of the job related -- in the
22 job related activity in the administrative arm of the
23 school district, that is --

24 A One of the things we had noted was
25 that there were only token representation at the

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administrative level in the school district. For instance, segregation was in the forefront. All the Black visiting teachers had offices that were from the administration building, whereas, all the whites had offices in the administration building. There were no Black secretaries in the administration building. For instance, and things like this. Nobody passed the level of --

Q Were there any Blacks in the higher echelon --

A No.

Q -- of the administration?

A No.

MR. LUNA: If it please the Court, we don't think we should try the school case here. Some of us weren't in that case.

JUDGE GOLDBERG: Mr. Irvin, this is all very interesting, but what do you want to prove? What relevance will all of this have to the case before us?

MR. IRVIN: I think it is very relevant, Your Honor, inasmuch as Dr. Conrad is one of three elected officials in Dallas, elected officials -- that is, who has a concern for the community. He

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lives in this community, and we are attempting to show -- and we will show -- that he has to run on the slats, he has to be identified with some other group outside the Black area that was identified this morning by Mr. Maier. He has to go outside and gather support and the problems of the nature and complexity of the problems are the same problems that tells about Dallas. That is, that Dr. McClesky testified about --

JUDGE GOLDBERG: Go ahead.

MR. IRVIN: I will be through with this line of questioning in a minute.

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2 Q Where is your office, Dr. Conrad?

3 A 4439 South Oakland.

4 Q And where do you live?

5 A On Lanark, 203 Lanark.

6 Q And approximately in distance, is
7 that your place of business and your place of residence,
8 is that in the Black community?

9 A Yes.

10 Q To and from work, is this area, or
11 corridor completely Black?

12 A Just about.

13 Q Have you, in your 16 years in living
14 and working in Dallas, noticed any appreciable change in
15 the nature of let's say, the streets from Lanark Street,
16 Cedar Crest Street, to Oakland Street -- in that area?

17 A Yes. In my opinion, the maintenance
18 of these streets have deteriorated rapidly since the area
19 has been integrated.

20 Q In your opinion are they -- what
21 did you notice about the nature of the services there --
22 that is, in terms of transportation, garbage collection,
23 -- do you, in the Oakland or Lanark or Cedar Crest area
24 notice any changes in that area?

25 A I feel there has been a general

1 Direct - Conrad

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2 deterioration, for instance, on Cedar Crest, it has been
3 filled with potholes for the past four or five years,
4 with very little maintenance.

5 Q As a doctor, you do treat quite a
6 number of Black patients?

7 A 99 percent of my practice is Black.

8 Q And do you have any observations as
9 a doctor, as to the quality of the health services that
10 your clients or patients receive, or how they appear to
11 you as a physician?

12 A Well, one of the problems that -- in
13 the community is proper health facilities. This is one
14 of the great concerns of the people in the community --
15 adequate health care within the area.

16 Q Are you familiar with the long history
17 -- well, strike that question. Now, Doctor, you have
18 lived in Dallas some 16 years. Isn't that true? And do
19 you feel that in your opinion, as a Black elected official
20 do you feel that Dallas, the City of Dallas, or the
21 County, that is, do you feel that -- for instance, you
22 could pull up stakes and move to Richardson, let's say,
23 and commence practice in your profession out there and
24 live as comfortable as you are now?

25 A Begin practicing out there? Well, my

1 Direct - Conrad

2 practice has always been 99 percent Black. I don't have
3 any way of really forecasting what would happen if I
4 moved out there. I am really unable to answer that in
5 that manner.

6 MR. IRVIN: That is all of the questions
7 I have. I pass the witness.

8 JUDGE JUSTICE: Are there any
9 questions from any of the Plaintiffs'
10 attorneys?

11 MR. COLLINS: Yes, Your Honor, if
12 the Court please. My name is John
13 Collins.

14
15 CROSS EXAMINATION

16
17 QUESTIONS BY MR. COLLINS:

18 Q Dr. Conrad, I believe you told us
19 you lived there in Dallas for 16 years. Based on your
20 observation during that period of time, can you tell the
21 Court whether or not the hostility of the white majority
22 in Dallas that has manifested itself in the schools and
23 churches and houses and in State statutes, whether or not
24 this hostility has been totally eliminated up to the
25 present time?

1 Cross - Conrad

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2 A No. This hostility has not been
3 totally eliminated.

4 Q Can you describe for the Court some
5 ways in which you see this as a Black citizen in Dallas
6 County?

7 A Well, in my opinion, one of the --
8 well, one thing that happened when I was first running,
9 one of the newspapers stated that if and when a Black
10 was elected to the School Board, the white community would
11 pick the Black and the place and the time. This happened
12 during my run-off campaign.

13 Q What year was that, please, sir?

14 A '67. In my opinion, the great out-
15 burst of 1971, the so-called anti-bussing demonstrations
16 was a situation of racism for indeed out of the thousands
17 of people that demonstrated down at the School Board,
18 none of them were really concerned about the five or
19 six thousand Black kids were really being bussed. We
20 run into it all -- all over and in covert forms, different
21 forms, prejudice.

22 Q Dr. Conrad, I assume that you are
23 familiar with most of the members of the Dallas County
24 Legislative delegation?

25 A I know most of them, yes.

1 Cross - Conrad

404

2 Q All right. Do you have an opinion
3 as to whether or not that delegation is responsive to
4 the needs of the Black citizens in Dallas County?

5 A Most definitely not. I feel as
6 though that many of them are not responsive at all to
7 the Black community or to the economic deprived; not
8 necessarily the Black community.

9 Q I assume, too, Doctor, that in your
10 16 years in Dallas County, you have had an opportunity
11 to observe Legislative races there in the County, have
12 you not?

13 A Yes.

14 Q Let me ask you this question, Dr.
15 Conrad, do you have an opinion as to whether or not an
16 independent Black candidate, running county-wide in
17 Dallas County, independent of the D.C.R.C. slate, could
18 be elected today in Dallas County?

19 A It all depends upon circumstances.
20 In a general election, I would say no.

21 Q All right. Now, what about in the
22 primary? Could an independent candidate be elected in
23 the primary?

24 A In the primaries, I would say no. The
25 special occasion I have reference to, in run-offs, there

1 Cross- Conrad

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2 is always the chance that the majority will go to sleep
3 on the job or for fulfilling unexpired terms, or this sort
4 of thing. A great opportunity because the interest is
5 there.

6 JUDGE WOOD: Doctor, without the
7 support of that slate, which is apparently
8 very powerful, could a white be elected?

9 A I doubt that.

10 JUDGE WOOD: All right.

11 MR. COLLINS: Pass the witness, Your
12 Honor.

13 JUDGE GOLDBERG: Any further
14 questions? Do you have any questions, Mr.
15 Luna?

16 MR. LUNA: Yes, sir.

17
18 CROSS EXAMINATION

19
20 QUESTIONS BY MR. LUNA:

21
22 Q Dr. Conrad, you mentioned Joe Kirving.
23 Now, he was and is a very popular Black in the entire
24 County, is he not, and was at the time he ran for the
25 Legislature?

Cress - Conrad

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A Well, we would have to limit that to popularity in definite areas.

Q Well, let me ask you exactly, in your opinion, based on your observation and politics, the only reason Joe Kirving was not elected is because he was running on the Republican ticket, instead of the Democratic ticket, wasn't it?

A Yes.

Q Dr. Conrad --

A -- now, this is for Legislature and not School Board.

Q Yes, sir. For the Legislature, that in my question. His being defeated, in other words, had to do with party and not race; party affiliation and not race?

A That is putting it very simply and it was not quite that simple. If you remember, that was the year of Nixon's administration and most Blacks voted against Nixon in Dallas County.

Q Well, most Blacks from Dallas County always voted against Republicans? Is that right, Doctor Conrad?

A I am not sure about that. I am not that knowledgeable about previous elections.

Cress - Conrad

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1 Q Clay Smothers was a Black, too,
2 wasn't he, Dr. Conrad?

3 A Yes.

4 Q And he, too, was defeated for the
5 Legislature last general election, was he not, sir?

6 A Yes, sir.

7 Q But he also was on the Republican
8 ticket, was he not?

9 A But I don't think his defeat was
10 tied particularly to the fact he was a Republican, but
11 for some other reason that you well know.

12 Q So, in other words, simply because
13 a man is Black doesn't mean that the Black community is
14 going to vote for him, whether it is a single member
15 district, or multi-member district?

16 A That's correct.

17 Q It is on qualifications and what they
18 feel is effective representation? Is that correct?

19 A That's correct.

20 Q Dr. Conrad, would you agree that
21 Senator Oscar Maury, although he is white, has adequately
22 and effectively represented all interests of Dallas
23 County in his district, including the majority of the
24 Black voters?
25

Cross - Conrad

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A I think you could say he has been a good Senator.

Q Dr. Conrad, you mentioned health care. Is health care and prevention of disease something that is a community of interest for everybody in Dallas County, regardless of race, creed, color, or national origin?

A It should be.

Q And they all need to work together on it?

A Yes.

Q You told us you ran for the School Board?

A Yes, sir.

Q You ran at large?

A Yes, I did.

Q Did the Black community pick you originally to run?

A Well, a small committee of which I was a member.

Q Which was a representative of the Black community?

A I am not so sure of that. It was a representative of the people at that time who were

1 Gross - Conrad

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2 interested in getting somebody on the School Board who
3 would reflect the interest and concern of the Black
4 community.

5 Q Now, I asked you that question to
6 come down to the way the political system works and
7 directing your attention to the legislative slate, isn't
8 it a fact that you were one of several Black people who
9 chose Zan Holmes to run for the Legislature at the time
10 he was chosen?

11 A That's right.

12 Q And any time anybody is chosen to
13 go on a ticket, don't all knowledgeable political people
14 go to the community from whence he comes to ask them for
15 their advice and recommendation in putting that ticket
16 together?

17 A He was not on the ticket when we
18 selected him. He was elected for an unexpired term and
19 then placed on the ticket.

20 Q But they are never placed on anybody's
21 ticket until they get the local support, are they, Dr.
22 Conrad?

23 A I am not sure about that. The reason
24 I am not sure is because there have been many members
25 placed on that legislative ticket that certainly didn't

1 Cross - Conrad

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2 have the generalized support of the Black community.

3 Q Although it happened when you first
4 moved to Dallas, you are familiar with the selection
5 process of Joe Lockridge that he was selected by a similar
6 group as Zan Holmes was?

7 A I was told that there was a meeting.
8 Now, other than that, I am not aware of all of the
9 details.

10 Q Yes, sir. Dr. Conrad, I am going to
11 hand you what has been marked for identification purposes
12 please, sir, as Defendant's Exhibit D-55. What is that
13 D-55, please, sir?

14 A It is a facsimile of a telegram.

15 Q And who sent the telegram?

16 A It was sent out over my name through
17 a public relations firm, I think. Now, that has been
18 quite a while ago.

19 Q Yes, sir, but it bears your signature?

20 A That's right.

21 Q With, of course, your authority?

22 A That's right.

23 Q Now, that signature, that telegram
24 was soliciting support for particular candidates, was it
25

1 Cross - Conrad

411

2 not?

3 A That's correct.

4 Q Who were they?

5 A Senator Ralph Yarborough,

6 Representative Zan Holmes, Senator Oscar Murry and Berlin
7 Brashers.

8 Q Was it sent predominantly to the
9 Black community?

10 A Yes, we did. We attempted to limit
11 it to the Black community.

12 Q Now, the fact that you sent it only
13 to the Black community had no racist -- racial tones to
14 it, but simply in that area where your influence was
15 heaviest, wasn't it?

16 A Well, worse than that. One of the
17 things we didn't want to do was stir up what we call a
18 backlash, either.

19 Q The fact that a person sends a piece
20 of literature to the white community or to the Black
21 community is for what in their judgment might be the
22 best political effect, rather than for some racial reason,
23 isn't it?

24 A It depends on how you determine that
25 racial -- well, for instance, this telegram was sent

1 **Bross - Conrad**

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2 primarily to the Black community because in past
3 instances, the white community would get upset when they
4 would see something like that and they would immediately
5 tag that man as "an arch liberal; he is a friend of the
6 Blacks".

7 **Q** But we have gotten to the point with
8 our racial relations in Dallas County, Dr. Conrad, so
9 that any knowledgeable politician would not only appreciate,
10 but would actively solicit your endorsement in any
11 community, wouldn't he?

12 **A** Let me go back. When you say
13 "any politician would actively --" I doubt it.

14 **Q** Anybody who wants to get elected in
15 Dallas County would be very proud to have your endorse-
16 ment, wouldn't he?

17 **A** I hope so.

1 CE - Conrad

2 BY MR. LOHL:

3 Q You don't know of any politician, black or
4 white, in Dallas County who has ever said they didn't want
5 your endorsement, have you?

6 A Well, very few politicians turn down any
7 endorsement.

8 (LAUGHTER)

9 Q Dr. Conrad, I want to direct your attention,
10 if we may, please, sir, to a community in the southern part
11 of Dallas County that had a problem with an elevated high-
12 way a year or two ago.

13 Do you recall?

14 A Yes, I do, Spence community.

15 REPORTER: What community?

16 THE WITNESS: Spence, S-p-e-n-c-e.

17 Q Now, Dr. Conrad, the State Highway Depart-
18 ment had proposed to build an elevated highway through the
19 Spence community in South Dallas County, had it not?

20 A Yes.

21 Q And that was through a predominantly black
22 area?

23 A That's correct.

24 Q And many of our black citizens in that area
25 objected to the building of that elevated highway, because

1 CE - Conrad

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2 they felt there would be rapes, murders and other crimes
3 committed under it. Is that true?

4 A More than just that.

5 Q And unsightly?

6 A Unsightly. The community felt as though they
7 had not been consulted adequately. They felt as though there
8 had not been adequate representation in their behalf at
9 Austin, since there were no blacks sitting on the Commis-
10 sion that designed the highway.

11 Q Now, isn't it true that all 15 members of
12 the Legislative Delegation from Dallas County who were
13 elected at large went to the Highway Department for the
14 black community and assisted in getting that highway lowered
15 to ground level the way the black community wanted it?

16 A I don't know whether all 15. I do know that
17 after a mass meeting that was chaired by the three black
18 elective officials in Dallas that we got massive support
19 from all over, and I would rather suspect that we did have
20 all 15 of the legislators.

21 Q Now, Dr. Conrad, one of these members of
22 the Legislature is named John Boyle, who lives in Irving,
23 is he not?

24 A Yes, I think he does live in Irving.

25 Q And another one is Jack Kingston who lives in

1 CH - Conrad

2 Carrollton?

3 A Yes.

4 Q Now, each of those gentlemen live farther
5 from the Spence community than the single member legis-
6 lative representative who represents Ellis County and other
7 counties, does he not?

8 A I don't know about Ellis County.

9 Q You're not sure of that?

10 A I do know that the places where they live
11 are some distance from South Dallas.

12 Q Yes, and you also are aware that the Repre-
13 sentative who represents that single member district
14 immediately to the south of the Spence community did not
15 participate in helping lower that highway, did he, Dr.

16 Conrad?

17 A Who? I don't know the Representative imme-
18 diately south of that.

19 Q All right, the Ellis County Representative,
20 if he helped, you never saw it, did you?

21 A I didn't know anything -- I didn't know
22 which one of the 15 helped.

23 Q But you don't know of that Ellis County one?

24 A No, sir.

25 Q Now, don't you feel that one of the main

1 CE - Conrad

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2 reasons that those 13 members from Dallas County helped get
3 that highway lowered through the Spence community was
4 because the black community was a principal motivating
5 factor in getting them elected in the November primary (sic)?

6 A Why, certainly.

7 MR. LUNA: Thank you.

8 JUDGE GOLDENBERG: Anyone else have any
9 questions?

10 MR. COLLINS: Yes, Your Honor, we have
11 just a brief redirect.

12 JUDGE GOLDENBERG: All right.

13
14 REDIRECT EXAMINATION

15
16 BY MR. COLLINS:

17
18 Q Dr. Conrad, I think Mr. Luna asked you about
19 your role in placing Mr. Holmes' name on the DCRG slate
20 in the legislative race; did he ask you about that?

21 A No, not the DCRG.

22 Q Well, let me ask you this. Did you play any
23 role in seeing that Mr. Holmes was on or was one of the
24 members running in the Dallas County legislative races?

25 A Yes. Let me go back and bring you up to

RED - Conrad

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date, because I don't think the Committee for Responsible Government or whatever the name is had anything to do -- any part in this.

The untimely death of Joe Lockridge immediately after a primary left a void in the delegation from Dallas County. He was the only black representative that we had had. At the time of his death the only thing that could be run for in a regular election was the unexpired term of Mr. Lockridge, which amounted to about six months, say from the time of his death -- it must have been in May or June, whatever time it was, up until the beginning of the new session.

A group of us met together, and after much deliberation and haggling we ended up pushing Ian Holmes into the race, and I put it like that, because he was a reluctant candidate. We raised a small amount of money in the black community, and we did not get the endorsement of any major downtown group.

It was a 22-man race for this unexpired term that attracted little generalized public notice, so, therefore, he won it without a runoff in this state, because the turn-out was very, very low, and we were able to get the minority vote out and also kept quiet to keep the white majority from being aware of the race.

1 KED - Conrad

2 Now, immediately after this election some of us
3 approached, and I put it like this. I am trying to remember
4 the exact sequence, but the Democratic Committee had the
5 authority to select somebody for the November slate.
6 Although Ian Holmes won the primary, it was incumbent upon
7 the Democratic Executive Committee to select somebody for
8 November. The election had no legal effect on that, and
9 we simply had the opinion and attitude and posture that
10 unless Ian was accepted as the candidate for that unexpired
11 -- for that open slot of the ticket, we would not support
12 the whole ticket, and he was accepted, and we worked to-
13 gether that fall in getting the whole slate elected.

14 Q All right. Let me ask you this question, Dr.
15 Conrad.

16 Have you ever been consulted by anyone from
17 the Democratic Committee for Responsible Government about
18 any of the other 14 places in the Dallas County election---?

19 A I have never been consulted by them for any
20 of them -- for anything that I can recall.

21 MR. COLLIER: That's all the questions
22 we have, Your Honor.

EXAMINATION

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1
2
3 BY JUDGE GOLDBERG:

4
5 Q Dr. Conrad, you are a member of the School
6 Board of Dallas?

7 A Yes, Judge.

8 Q As I understand it, the School Board has
9 two types of representatives, those that come from a
10 district and those that are elected at large?

11 A We are all elected at large but must live
12 in a district.

13 Q That's right, but you must live in a cer-
14 tain district?

15 A Yes.

16 Q Is it your experience as a legislator on the
17 School Board that the fact that you are elected at large
18 has anything to do with the policy determinations which are
19 made by the Board?

20 A No.

21 JUDGE GOLDBERG: Thank you.

22 JUDGE JUSTICE: If nothing further,
23 you may stand down, Doctor.

24 Please call your next witness.

25 (WITNESS STANDS ASIDE.)

1 **MR. CUNNINGHAM:** Rev. Ian W. Holmes, Jr. 420

2 My name is E. Eric Cunningham, represent-
3 ing Plaintiff Intervenor -- Rev. Ian W. Holmes,
4 Councilman George L. Allen and Dr. Emmit J.
5 Conrad.

7 **IAN W. HOLMES, JR.,**

8
9 a witness called by Plaintiff Intervenor, after having
10 been first duly cautioned and sworn to testify the truth,
11 the whole truth and nothing but the truth, testified as
12 follows:

14 **DIRECT EXAMINATION**

16 **BY MR. CUNNINGHAM:**

18 Q Would you state your name, please?

19 A Ian Holmes, Jr.

20 Q And what is your address, Mr. Holmes, or
21 Rev. Holmes?

22 A 6910 Robin Road.

23 Q And that is in Dallas, Dallas County, Texas?

24 A That is correct, in Dallas.

25 Q How long have you lived in Dallas, Rev. Holmes?

DE - Holmes

A I have lived in Dallas for approximately 15 years.

Q And what is your profession or occupation?

A I am a minister in the United Methodist Church.

Q How long have you been a minister, sir?

A I have been a minister for about 20 years.

Q Do you hold any particular office within the United Methodist Church?

A Yes, I am District Superintendent of the Dallas Metropolitan District.

Q Now, coming directly to the point at hand, do you hold any particular elective state-wide office?

A Yes, I am a member of the Texas House of Representatives from Dallas County.

Q Any particular place, sir?

A Place 5.

Q And how many members of the State Representatives from Dallas County are there?

A There are 15.

Q When were you first elected to the State House of Representatives?

A I was first elected, I believe the date was June 18, 1968.

DE - Holmes

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Q Was this in a primary -- this was after the demise of Representative Lockridge. Is that correct?

A Right, this was in a runoff to fill the unexpired term of the late Representative Joseph Lockridge.

Q Did you receive the endorsement of an organization known as DCRG?

A I don't know that I received the endorsement of that organization at that particular time. Some of the persons who are presently in that organization endorsed me during that runoff.

I was unaware of the DCRG as an organization during that particular time.

Q After the runoff and you were elected to fill the unexpired term of Representative Lockridge, did you then run in the primary and in the general election on the Democratic ticket?

A I ran in the general election in 1968, in the primary in 1970.

Q At that time did you receive the endorsement of the DCRG?

A Yes, I believe I did.

Q Is their political philosophy anywhere near that of yours?

A We differ on a number of things.

1 DE - Holmes

2 Q And I believe there were other members of
3 the 15-man elective State Representatives that did -- at
4 least, there was one that did not receive the endorsement
5 of the DCRG?

6 A Yes, in '70.

7 Q Who was that, sir?

8 A Representative Dick Reed, I believe.

9 Q Was his political philosophy anywhere near
10 that of yours?

11 A We tended to vote similarly on most issues.

12 Q If you know, what is the general political
13 philosophy of the 15-man committee, the other 13 since you
14 and Representative Reed seem to have the same political
15 philosophy?

16 A Oh, I don't know how I would describe the
17 philosophy of the 15-man delegation from Dallas. We differ
18 on a lot of things. We agree on a lot of things. I sup-
19 pose we run the entire spectrum of what is generally
20 referred to as the conservative to the liberal philosophy,
21 a little heavy on the conservative side.

22 Q Representative Holmes, are you familiar
23 and having run a county-wide race with the cost of running
24 a campaign in Dallas County, Texas?

25 A Yes, sir, I am.

DE - Holmes

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Q When you were first approached or pushed into running for the State Legislature, would you state what your costs were?

A I don't know what the total cost was. I was able to raise about \$900.00 in the black community. The majority of the support came from other persons in the party, and I have no way of knowing just how much money was involved. It was quite a sum, I know, because we put out one mass mailing, and that was pretty costly.

Q Now, when you say for the party, you are speaking of the Executive Committee of the Dallas County Democratic Party?

A Right, I received their help, especially in the general election November '68 and '70.

Q If it had not been for that support and help from the Democratic Executive Committee of Dallas County, Texas, do you think that you could have been elected in that primary in that general election?

A I am positively certain I could not have been elected if I had not had that support, financial and otherwise.

Q You have indicated that you are familiar with the cost of running county-wide. If a candidate was to run from a single member district, do you think that his

DE - HOLMES

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cost would be more or less?

A I think it would definitely be less, much less.

Q Do you think then that a black candidate would have a better opportunity of being elected to the State Legislature from Dallas County when he ran in a single member district, as opposed to a multimember district?

A There is no question in my mind that a black individual would have a much better chance of being elected if he ran from a single member district, than a multimember district.

Q I believe you are familiar with an attorney by the name of Berland Brashear?

A Yes, I am.

Q I believe he ran at the same time that you did in the last election?

A That is right, in the primary. Of course, I had no opponent; he did.

Q Let me ask you this. At the time that you were pushed into running for the Legislature Representative Lockridge was the only black of the 11-man team. Is that correct, sir?

A Of the 15-man team.

DE - Holmes

420

Q Of the 15-man team.

A That's right.

Q O. K. And when you were elected, you filled the void that Representative Lockridge had filled. Is that correct, sir?

A I guess so, in a sense of speaking. We were both black.

Q And when you ran the last time and were elected -- I believe you said in '70?

A Yes.

Q O. K., you ran uncontested. Is that correct, Representative?

A In the primary.

Q In the primary?

A Right.

Q You had a Republican opponent?

A Yes, I did.

Q But you did run as a member of a team in that general election?

A That is correct.

Q How long since your engagement in politics have you seen any instance where more than one black has been placed on the team or the slate of the Dallas County Democratic Party?

1 DE - Holmes 427

2 A No, I don't recall any instance of such.

3 Q Do you recall any instance where the Dallas
4 County Democratic Party placed more than one black on the
5 slate prior to your time or during the time of Representa-
6 tive Joseph Lockridge?

7 A No, I don't recall such an instance.

8 Q In other words, Dr. Conrad, Councilman
9 Allen and yourself are in one respect -- share one thing --
10 you are the one black in the State Legislature, Dr. Conrad
11 is the one black on the School Board, and Councilman Allen
12 is the one black on the City Council. Is that correct?

13 A From Dallas.

14 Q From Dallas?

15 A Yes.

16 Q And that in each instance each of the
17 three of you have had to run on a team or slate to be
18 elected to that position. Isn't that true?

19 A That is correct.

20 Q And from your knowledge do you think that
21 if either you or Dr. Conrad or Councilman Allen had not
22 been on that team or that slate, that either one of the
23 three of you could have been elected?

24 A I am--.

25 Q Running county-wide.

1 DE - Holmes

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2 A I am as positive as I can be that we
3 couldn't be elected if we did not have the kind of support
4 provided by a slate, financial and otherwise.

5 Q State, Representative Holmes, whether or
6 not the one black representative, and in your case I will
7 direct it to you, where you are elected as a part of a
8 team that you are expected to represent the black community
9 in Dallas County, Texas.

10 A Would you repeat that question, please?

11 Q As the one black representative of the
12 15-man team, are you expected to represent the total black
13 community in Dallas County, Texas?

14 A Yes, I find this to be something that is
15 expected of me. I am expected to be aware of most of
16 the concerns of the black community. I sometimes get the
17 feeling I am expected to be the sole representative of the
18 black community, that that's left up to me, but I do find
19 that that is my job in many respects.

20 Q In other words---

21 A I don't shirk from that job, although I try
22 to represent the total community, as well as the black
23 community.

24 Q Are you saying, Representative Holmes, that
25 this places something of a burden upon you to represent the

DE - Holmes

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229,000 blacks in Dallas County, Texas, sir?

A Well, I say it is a burden in the sense that it is my understanding in the multimember setup that everybody represents everybody else in the county, and we are all supposed to represent everybody. If all of us don't represent the interests of the black community, as well as we represent the interests of the other community, well, then, it is a burden upon me when I do try to be sensitive to the total needs of the black community, as well as the needs of the total community.

Q With respect to the sensitivity that I know that you have for the black community, do you feel that the other 14 members of the Dallas County team share this sensitivity with you?

A I think there are some members of the team who share that sensitivity. On the other hand, I don't think enough of the members share that sensitivity in the way that I would like to see them share it from the standpoint of how they vote and how they relate to the issues and how they actually seek to become informed as to the concerns and the needs of the black community.

Q Do you think that a part of this is caused by the multimember county-wide method of electing candidates for the State Legislature?

1 DE - Holmes

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2 A Certainly, I think so. I think that not
3 only holds true for the interests of the black community,
4 but I think there are other interests -- groups in the
5 community that are not -- whose needs aren't spoken to,
6 because they become lost in this kind of multimember
7 setup where everybody is supposed to represent everybody,
8 and yet, it can be a setup where some folk are never
9 represented. Nobody is really represented in full.

10 Q Do you think that if Dallas County had
11 a single member district plan where all 18 legislators
12 would be elected in single member districts that there
13 would be an increased sensitivity and a larger number of
14 the persons who would represent Dallas County, Texas?

15 A I think there would be---. Yes, an
16 increased sensitivity to the problems of the entire
17 community than is the case under the present setup.

18 JUDGE JUSTICE: When you say the entire
19 community, you mean the black community?

20 THE WITNESS: Yes, I mean the black
21 community and the white community, as well,
22 but especially the black community in light
23 of the fact that I feel that under the
24 present setup given one black representative
25 that the black community has gotten the short

DE - Barnes

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end of the stick.

JUDGE GOLDBERG: Would the same interests be served if the requirement was that there be a resident from one of 10 districts?

THE WITNESS: I think that that in my opinion wouldn't solve the total problem, but it would certainly increase the sensitivity and make things much better than they are right now.

JUDGE GOLDBERG: Did you appear before the Legislative Redistricting Board?

THE WITNESS: Sir, I wrote a letter -- sent a telegram to the Legislative Redistricting Board, requesting appearance before that Board. I got a letter from Lt. Governor Ben Barnes after the Board had rendered its decision, stating that so much correspondence had come across his desk during the time that I had written him, that he did not have the time to read my telegram or to respond to it, and that is why I did not get a response to my request to appear before that Board, but I certainly telegraphed a request on my -- as a matter of

1 DE - Holmes

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2 fact, it was a joint telegram sent by

3 City Councilman George Allen, by Dr.

4 Emmit Conrad, who just testified, and

5 myself.

6 (No omission here.)

1 Direct - Holmes

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2 JUDGE GOLDBERG: What did this
3 telegram say?

4 A We stated that we were very much
5 in favor of single member districts for the legislative
6 delegation and representatives in Dallas County; and
7 we felt that such a setup would be in the best -- would
8 give the Black community its proper representation. It
9 would be more sensitive to the needs and to the concerns
10 of the Black community; that we were wanting to appear
11 before the Board to express that concern, to express
12 our position before that Board.

13 JUDGE GOLDBERG: And you
14 don't think that concern could be
15 represented by merely a residential
16 requirement?

17 A I don't think it could be expressed
18 by merely a residential requirement, because you then
19 would still have the setup where the entire community
20 or a small group of people could determine who runs and
21 who is eventually elected, because you see, just because
22 a person lives in a community does not necessarily mean
23 that that person has the best interests of that
24 community in mind. I think only that the people in
25 that community are in a position to best state that any

1 Direct - Holmes

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2 individual has really that interest at heart.

3 JUDGE GOLDBERG: How do you
4 define "community"? By color, by
5 party, by political point of view,
6 by church -- what do you mean by
7 "community"?

8 A Well, I think a community could
9 be, defined along all those lines that you mentioned,
10 but when I talk about a community, I am talking about a
11 group -- an area that has certain things in common. It
12 does not have to be race or, for example, you take
13 residential area -- a neighborhood.

14 JUDGE GOLDBERG: Does it
15 have to be economic?

16 A What is that?

17 JUDGE GOLDBERG: Does it have to
18 be economic?

19 A It could be economic, it
20 could be racial, it could be party and it could be a
21 combination of all of these along a certain common line
22 -- area and otherwise.

23 JUDGE GOLDBERG: Thank you.

1 Direct - Holmes

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2
3 **DIRECT EXAMINATION**

4
5 **QUESTIONS BY MR. CUNNINGHAM:**

6
7 Q Representative Holmes, while you
8 were in the last Legislature, did you serve on any of
9 the Congressional or Legislative Redistricting Committees?

10 A Yes. I was on the Committee of the
11 Congressional and Legislative Redistricting.

12 Q Who was the Chairman of that
13 Committee?

14 A Representative Delwin Jones from
15 Lubbock.

16 Q Were any hearings held outside of
17 Austin?

18 A Yes. There were hearings around
19 the State. There was one in Houston, I recall we had
20 one in Dallas, also, and some other areas.

21 Q Did you appear before the one in
22 Dallas, sir?

23 A Yes, I did.

24 Q Okay. Did other persons appear in
25 Dallas?

1 Direct - Holmes

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2 A Yes. We had a number of persons
3 who attended that hearing and appeared before the Board.

4 Q Do you know what the majority
5 preference of the people who appeared before this hearing
6 was with respect to a multi-member or single member
7 district?

8 A Yes. As I recall, the majority of
9 the persons who appeared before that committee in Dallas
10 expressed a desire to see single member district prevail
11 in the redistricting plan for Dallas County.

12 Q Did you have any type of understanding
13 with the Chairman of this Committee with respect to whether
14 or not Dallas County would be multi-member or single
15 member districts, based upon the majority sentiment?

16 A Well, it was my understanding as a
17 member of the committee, that the purpose for the
18 hearings was to get input suggestions from the various
19 areas in the state and that on the basis of those
20 suggestions, and the fact that we received them in those
21 hearings, we would then draw up a plan, a redistricting
22 plan. Of course, the final plan for Dallas County, as
23 you well know, is one that provided for multi-member
24 -- for multi-member representation, in spite of the
25 fact that the majority of the people at that particular

1 Direct - Holmes

2 hearing expressed a desire for a single member
3 district.

4 Q And during your last term when you
5 were here in Austin, did you have any number of Blacks
6 that appeared in Austin when this matter of multi-
7 versus single member districts was being discussed?

8 A Yes. That is -- we did.
9 As a matter of fact, more Blacks came to Austin during
10 the last session from Dallas County as a group to lobby,
11 than I have ever seen come since I have been a member
12 of the Legislature. And this year they came down, several
13 groups, all expressing the desire that we would have
14 single member districts for our Legislative district in
15 Dallas County.

16 Q Okay. You are not a member of the
17 D.C.R.G., are you?

18 A No. I am not.

19 Q Do you know whether or not there are
20 any Blacks that are members of the DCRG?

21 A It is my understanding that there
22 are at least one or two. I don't fully know the situation
23 on that question.

24 MR. CUMMINGS: Pass the witness.

25 JUDGE GOLDNER: If it were a fact

1 Direct - Holmes

2 that the Republican party was in
3 the majority in a certain area in
4 Dallas county, would you be in favor
5 of a district which served that
6 party?

7 A Yes, sir. I certainly would.

8 JUDGE WOOD: Rev. Holmes, of
9 course you would have to feel, would
10 you not, the same responsibility,
11 where you are representing a single
12 member district, to the minority
13 groups, such as the whites, Mexican-
14 Americans, or Republicans in that
15 district, would you not? Could you
16 do that were in a single member
17 district than where you were in a
18 multi-member district?

19 A Yes. I think you could more so
20 in a single member district.

21 JUDGE WOOD: You think you could
22 show the same feeling to the minority
23 in your district, such as the whites
24 and the Mexican-Americans and
25 Republicans that are all in your

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district? Do you follow me?

A Would you restate the question,
Judge?

JUDGE WOOD: It is perfectly
obvious where you have a single
member district rather than a
multi-member district, you are
going to represent, in your
particular instance, the majority
of your constituents which will be
Blacks?

A Yes, sir.

JUDGE WOOD: Do you have the
same sensitive feeling in that
district to the whites, the Mexican-
Americans and Republicans that you
now have in the multi-member district?

A Yes, sir.

JUDGE WOOD: You see, you are
 beholden now to all of the people in
Dallas; whites, Blacks, Mexican-
Americans and sometimes Republicans
and the like?

A Yes, sir.

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2 JUDGE WOOD: Would you
3 have the same feeling in a single
4 member district where there are
5 obviously minorities composed of
6 whites, Mexican-Americans and
7 Republicans and the like?

8 A To the total County?

9 JUDGE WOOD: Keeping in mind
10 that whites are the minority in your
11 district, if it is a single member
12 district, you understand?

13 A Let me see if I follow your line
14 of questioning.

15 JUDGE WOOD: You not only have
16 to be sensitive to the Blacks that are
17 the majority, but to the whites and other
18 ethnic groups, Mexican-Americans, and all
19 that?

20 A Yes, sir.

21 JUDGE WOOD: Do you feel like
22 that is going to dilute your feeling of
23 sensitivity where you are now representing
24 a multi-district, and where your
25 responsibility is to the entire group?

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A No.

JUDGE WOOD: All races?

A No. I don't think it would dilute my sensitivity to the interests of the groups in the County, because I personally feel --

JUDGE WOOD: -- I mean in your district; not in your county. Because they are going to be the minority. In your single member district where you say that the Blacks are predominant, and you are predominantly responsible to the people in your district, the minorities are going to be the whites, are they not, in a singlemember district? Is that true?

A Yes. According to what district --
I am still not --

JUDGE WOOD: -- I am saying assume you represent a district which is predominantly black.

A Right.

JUDGE WOOD: And the minority group would be the whites, the balance

Direct - Holmes

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of them would be white, Mexican-American and Republicans or minority groups.

A Yes.

JUDGE WOOD: Do you feel the same sensitivity to those people, where they are not responsible and you don't look to them for an election, then you would in a multi-district where you look at all of Dallas County for reelection? Would that dilute your sensitivity to where you feel you are no longer responsible to them because you don't rely on their votes? You don't need their votes?

A No. It would not dilute my sensitivity.

JUDGE WOOD: You follow what

I mean?

A Yes. I follow what you mean.

But I don't think that would do that in my single member district.

JUDGE GOLDBERG: How many groups do you think we should create in order

1 Direct - Holmes

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2 to develop this single member
3 district theory?

4 A I don't think it is a matter of
5 creating groups. I think we ought to create 18 single
6 member groups in Dallas County.

7 JUDGE GOLDBERG: Would it be
8 purely on a population basis?

9 A Purely on a population basis.

10 JUDGE GOLDBERG: Where everything
11 was contiguous?

12 A So everything is contiguous and
13 equal population and Senator Maury said along the lines of
14 common economic interest, and I think if that were done,
15 it would provide districts that would be fair to the
16 total City and we would have Black representatives; we
17 would have white representatives, and Chicano
18 representatives and all work together and have a great
19 say.

20 JUDGE GOLDBERG: But you don't think
21 we have to gerrymander to get a group
22 representation?

23 A No. I don't think you would have
24 to gerrymander if they were all equal in population and
25 along lines of common economic interest. I don't think

1 Direct - Holmes

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2 you would have to gerrymander it. Now, if you --

3 JUDGE GOLDNERG: -- who is
4 going to make this economic interest
5 judgment?

6 A I would like to have some part
7 in making it. And I am sure everything would work out
8 pretty good.

9 JUDGE GOLDNERG: I am sorry.

10 A But Judge, I am sorry, but may I say
11 just one other thing?

12 JUDGE GOLDNERG: Sure.

13 A To your question of gerrymandering,
14 you know you can gerrymander in many different ways, and
15 you can gerrymander groups out and I think you can also
16 just as easily gerrymander groups in. It can be a useful
17 tool.

18 JUDGE JUSTICE: Has there been
19 cross examination of this witness? Is
20 there cross examination?

21 MR. RICHARDS: We are still on
22 direct.

23 MR. COLLINS: We are still on
24 direct, I think.

CROSS EXAMINATIONQuestions by Mr. Collins:

Q John Collins is my name, Rev. Holmes, and I have just a few questions for you. You expressed an opinion earlier that you do not think you could be elected County-wide in Dallas County without being on the slate. Did I understand you correctly?

A Yes. Given my understanding of what the slate has meant to my election in the past.

Q Now, why is it you don't think you could be elected without this slate?

A Number one, because of the financing that is required for anybody to get elected county-wide. That is the basic thing, and when you talk about financing you are talking about a whole lot of other things.

Q What about physical manpower in distributing cards and posters and this kind of thing?

A You are talking about that when you are talking about financing.

Q What about such a problem as name recognition? Does that have anything to do with being

1 Cress - Holmes

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2 elected on a county-wide slate?

3 A Oh, I certainly think that is an
4 important ingredient. And that all depends. As a matter
5 of fact, I personally feel that name identification is
6 helpful -- more helpful in the election of a Black than
7 of a white, in a county-wide setup when you have got the
8 slate thing going for you.

9 Q Reverend Holmes, what about the life
10 style of the entire community there in Dallas County?
11 Does that have anything to do with, you think, with,
12 your, say inability to be elected county-wide? You
13 expressed the opinion you do not think you could be
14 elected county-wide without the slate. Does the life-
15 style in the entire community have anything to do with
16 that?

17 A Well, I think -- well, yes, I think
18 so. Granted, we are making progress in Dallas in human
19 relations, and I am appreciative of that fact, but I still
20 believe that it would -- different housing patterns that
21 we have, which in my opinion, that says something, and
22 given some of the other problems that we have, for example,
23 out in some of the country towns, Mesquite, Richardson,
24 and many other areas, you have a very small percentage
25 of Blacks living in these areas which says something about

1 Cross - Holmes

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2 the life-style of some of the areas in Dallas County.
3 And I think that when you put all of that together and look
4 at it -- some of the problem areas, I think we would be
5 kidding ourselves if we didn't admit and we all know this
6 to be true, that it would be difficult for a Black to
7 be elected county-wide. The smaller the area, the greater
8 his chances of being elected as an independent representa-
9 tive to anything.

10 Q Have you, yourself, ever had an
11 opponent in a Democratic primary?

12 A I have never had -- I have only been
13 in one Democratic primary and I didn't have an opponent
14 in that one.

15 Q Now, can you describe briefly for
16 the Court what you think some of the issues are that the
17 Black community in Dallas County is interested in?

18 A Well, I must admit -- I think the
19 number one issue that the Black community is interested
20 in right now is this whole matter of single-member
21 districts.

22 Q Assume there would be other issues
23 that would come up in the Legislation section.

24 A Yes. There are other issues. I think
25 that the Black community certainly is interested in

Cross- Holmes

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1 economical, the tax programs, you know, just where those
2 taxes -- the majority of the taxes are going to come
3 from -- you know, who is going to be taxed. And the sources
4 of revenue -- tax revenue. I think the Black community
5 is definitely interested in education, quality education,
6 vocational education. The Black community is interested
7 in job opportunities. I think this is a major concern
8 -- this whole area of job opportunity in State agencies
9 and other -- and in businesses throughout the State.

10 Q Based on your experience as a
11 legislator, how would you evaluate the performance of
12 the Dallas County legislative delegation in being
13 responsive to the needs of the Black community on these
14 issues?
15

16 A I personally having served as a
17 member of the Dallas County delegation, this is my own
18 personal opinion. When you talk about the present 15
19 man delegation, I would have to rate that delegation
20 low in terms of meeting many of the -- the major
21 concerns of the Black community. And those concerns are
22 the ones I just stated, and especially just like I say,
23 we are talking about the same number of districts. And
24 we are talking about the taxes. I think when we talk about
25 job opportunities, and when you look at the whole picture

Cross - Holmes

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in the State government, representation on boards and agencies, being given an opportunity to be involved in the decision-making process, I think that when you truly take a real honest look at the picture, and what has been accomplished, you would have to agree. And you asked me as a Black man. And speaking from the Black community and this is what I would say, I would rate it low. On the other hand, there have been some instances, of course, where there has been some concern demonstrated by some of the members more so than others.

Q Now, Reverend Holmes, you stated earlier that you felt that you were expected to represent the Black community in Dallas County. Now, who is it that expects you to do this?

A Well, when I say this, I am simply trying to point out the fact -- this is something that I have experienced as being the only Black Representative from Dallas County. I sometimes find myself in a position wherein if I am not sensitive to some of the needs to the Black community, I don't call attention to some problem areas or some needs or so forth, and so nobody else does it. And perhaps because that is where I live, and you know, that is where I move and that is where I have my being, and I think that is unfortunate. Whereas,

1 Cross - Holmes

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2 on the other hand, I feel that I am very sensitive
3 to some of the issues in the larger community in Dallas
4 County, because of my job. I do move about the total
5 County, but I don't think that is true in reverse among
6 the majority of the members of the Texas House of
7 Representatives and the present membership from Dallas.

8 MR. COLLINS: Thank you, that's all
9 of the questions I have.

10 JUDGE GOLDBERG: Any other questions?

11 Mr. Luna?

12 MR. CROUCH: Your Honor, could we
13 have a couple of questions still on the record?

14 JUDGE GOLDBERG: Yes.

15 JUDGE WOOD: State your name for the
16 record.

17 MR. CROUCH: Tom Crouch, representing
18 the Republican intervenors in the Tyler and Dallas cases.

19
20 CROSS EXAMINATION

21
22 QUESTIONS BY MR. CROUCH:

23
24 Q Reverend Holmes, how much staff do
25 you have as a member of the State Legislature?

1 Cross - Holmes

45i

2 A I have one secretary.

3 Q Is that the same staff that is
4 afforded all of the Legislators?

5 A One and a half.

6 Q Do you find that adequate to respond
7 to the needs of the constituency of a million, three
8 hundred thousand?

9 A I find that very, very inadequate.

10 Q Do you think in response to some of
11 the questions that have been propounded to you by the
12 Court, if I understand your testimony correctly, you
13 think you could be more sensitive to the total needs
14 of the constituency of 74,000 than you could to a
15 constituency of a million, three hundred thousand?

16 A I certainly do.

17 MR. CROUCH: I have no further
18 questions.

19 JUDGE GOLDNER: Let's take a 10
20 minute recess.

21
22 (Whereupon, Court recessed for
23 10 minutes).
24
25

1 Cross - Holmes:

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2 JUDGE JUSTICE; You may examine,

3 Mr. Lima.

4
5 CROSS EXAMINATION

6
7 QUESTIONS BY MR. LIMA:

8
9 Q Reverend Holmes, we talked earlier
10 in your testimony about Berlin Bashear, who ran on the
11 Democratic ticket in 1970, and was defeated. I would
12 like to ask you if it is not a fact that, first of all,
13 Mr. Berlin Bashear was relatively new to the community
14 when he offered himself for election?

15 A I believe that is correct; that would
16 be a fair statement. He had only been in the City about
17 three or four years, I believe.

18 Q And, although he was defeated, isn't
19 it true that of the approximately 15,000 votes that he
20 received in the run-off, that more than half of them was
21 from the white community?

22 A I am not sure. I don't recall the
23 exact figures.

24 Q All right.

25 A I just would have no way of verifying

1 Croes - Holmes

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2 that.

3 Q Now, you mentioned running on a
4 ticket. Actually, that is what politics is -- is group
5 effort and helping get people elected -- isn't it?

6 A A lot of group effort involved, yes,
7 I agree.

8 Q And, no one in politics would be
9 expected to get elected if he didn't have some friends
10 to help him?

11 A That is right, -- and money.

12 Q Yes, sir. Reverend Holmes, where do
13 you live in Dallas County?

14 A I live at 6910 Robin Road.

15 Q Now, if I might refer to a County-
16 wide map. I want to show you this map and ask you to
17 tell us generally where it is that you live?

18 A Okay.

19 Q By precinct number. Would that help,
20 do you recall?

21 A Right. Yes, I live in here (witness
22 points) I live in, let's see, can you bring that a little
23 closer -- one, sixty nine, right there.

24 Q Precinct 169 as shown on Plaintiffs'
25 Exhibit Number 2, is that right?

Cross - Holmes

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A That is right.

Q Now, if we went to single member districts, where you live -- if you had to rely on the Black vote to elect you, we probably would lose you as a member of the Legislature, wouldn't we?

A You probably would. And, you see, that is not -- having Zen Holmes in the Legislature is not my concern -- it is having legitimate representation from the Black community, and I am well aware of that.

Q You would admit that Zen Holmes is legitimate representation, wouldn't you, Reverend Holmes?

A What I mean is that having -- I would like to think that I am. But, I do know that I would not be as legitimate as being elected from a group, smaller group of people, who knew that I was their representative and they elected me and that nobody else had much to do with it.

Q Without asking you to be immodest, Reverend Holmes, there is not any question in your mind but what the Black community knows that you take care of their interest as effectively and as energetically and as knowledgeably as anybody could that is represented from any district, isn't that true?

1 Cross - Holmes

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2 A Yes, sir. Now, I would like to think
3 I am joined in that by 14 other representatives.

4 Q Yes, sir.

5 A Which I don't feel I am.

6 Q Now, assuming that Dallas County
7 was divided up into 18 single member districts, do you
8 feel then that you would be joined in that effort that
9 you have described for the Black community by your 17
10 colleagues from Dallas County elected from single member
11 districts?

12 A Yes, sir. I say we would, because,
13 you see, that means I would have only one vote, they
14 would have only one vote and they would need me to help
15 them vote and do the things they needed in their areas,
16 and likewise I would need them and we would work together.
17 Nobody would have any more power than anybody else.

18 Q Hasn't worked that way in Harris
19 County where they are elected from Congressional Districts,
20 has it?

21 A Yes, sir. Look, that is Harris
22 County, Mr. Luna.

23 Q "Yes, sir, it has not worked that
24 way?"

25 A I don't know. I am not in a position

1 Cross - Holmes

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2 to know just how -- you see, Harris County hasn't
3 really had single member districts.

4 Q But, it has had less than county-
5 wide districts?

6 A Yes. But I still think there is a
7 lot -- a big difference between what they have and
8 single member districts. There are many other factors
9 that come into being when you have single member districts.

10 Q Would it be fair to say that based
11 upon your experience as a member of the legislature,
12 that the Harris County delegation has worked together
13 as a team much less than the Dallas County delegation
14 has worked as a team? I don't want to put you in a
15 position --

16 A No. Yes, when you are talking about
17 working together as a team, I think this thing of the
18 Harris County delegation has sort of been overplayed. I
19 have seen this delegation work together for a lot of
20 things that I felt were in the best interest of all of
21 Harris County, and when you talk about a team, you know,
22 it is working for what, you know. You can have a team --
23 I mean, what have you said? Yes, team effort.

24 Q Well, the Harris County delegation,
25 for instance, could not even agree on a person to be

1 Cross - Holmes

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2 the Chairman of the delegation, could they?

3 A I am not that closely familiar
4 with that particular situation.

5 Q Do you --

6 A But the only thing I would say, Mr.
7 Luna, that might be good. You know, maybe that is what we
8 need, you know, more diversity, more opinions
9 represented in our delegation.

10 Q All right. Let's talk about
11 diversity, Reverend Holmes.

12 A All right.

13 Q On the Harris County delegation in
14 the at-large elective process, it is true, of course,
15 that we have on that delegation one Black at the present
16 time?

17 A That is right.

18 Q We have on that delegation one man
19 who is white, but has heavy support from the labor unions
20 and the Black community, to-wit: Dick Reed, do we not?

21 A That is right.

22 Q We have another one or two that could
23 clearly be defined as liberal ideology, as far as your
24 political philosophy is concerned, do we not, sir --
25 that is Jim Strang, to begin with.

Cross - Holmes

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1
2 A Yes.

3 Q And, then we have another member
4 of that County-wide delegation who is Jewish, do we not?

5 A That is right.

6 Q We have another one from Greek
7 descent?

8 A Yes, that is right.

9 Q You have several Catholics, three
10 or four, do you not?

11 A I believe so. I am not certain
12 about all of the religious affiliations that are members.

13 Q So, now, would it be fair to say
14 that in the County-wide delegation from Dallas County,
15 that it is as truly representative of bringing all of
16 those under the great Democratic umbrella that the
17 Democratic party goes by as you could come under in
18 any kind of process that you could think of?

19 A Mr. Lane, I don't know how to answer
20 that question. Are you saying that was done by design?

21 Q I would like to think it was done
22 by the elective process, wouldn't you think?

23 A It was done by the elective process,
24 yes, with some influencing. But, what do you want me to
25 say? I am trying to --

1 Cress - Holmes

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2 Q All right. Let me ask you this:
3 Does Dallas County, in your opinion, have a community
4 of interest that is county-wide in many, many areas?

5 A Yes, I think so. I don't know
6 exactly what you are asking.

7 Q Health, for instance.

8 A Yes, I think so.

9 Q All of them work for the health bills,
10 Elmesenary Institution, the Parkland Hospital and all
11 of the things that have to do with health?

12 A Yes.

13 Q Certainly, disease knows no boundaries,
14 races or color lines.

15 A No. Disease knows no boundaries.
16 But, you can kind of define health problems down to a
17 smaller unit, you know. You know, and then you run into
18 some problems there. But, generally, we have general con-
19 cern. But, we are talking about specific areas as to how
20 they are affected, then you have got a different picture
21 or situation, I believe.

22 Q I believe you have told us that the
23 last election on the Democratic ticket, county-wide,
24 that you were not opposed on the Democratic ticket by
25 anybody.

Cross - Holmes

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A In the primary.

Q In the primary?

A Right.

Q Now, wouldn't that tend to indicate that politically in Dallas County there is no discrimination against the Blacks?

A No, sir. Mr. Luna, I don't think you can draw that conclusion from that.

Q Well, nobody wanted to discriminate enough to run against you, did they?

A I don't know why. I am not in a position to know why nobody ran against me. You see, I just don't know.

Q I think it was because they didn't think they could win county-wide against you.

A Well, that might have been Dallas, paying its respect to its token Black.

Q Now, it has been mentioned here that among many other organizations, that somewhere along the line the D.C.R.C. may have endorsed you?

A Yes.

Q Is it true that the -- many other Democratic clubs endorsed you, the Democratic men of Dallas County, the Democratic Women of Dallas County,

1 Cross - Holmes

2 the Garland Democratic Women and endless other Democratic
3 organizations?

4 A Yes, that is true.

5 Q And, wouldn't you say that in the
6 Democratic primary, that all of these various democratic
7 organizations are working to happy let candidates that
8 appeal to them?

9 A Candidates that are --

10 Q That appeal to that group, whether
11 it is democratic men --

12 A I would think so.

13 Q Now, having been elected, then, and
14 endorsed by these many groups, has the D.C.R.G. any party
15 officer, or any other group from Dallas County tried to
16 pressure you in any way that you voted as a member of
17 the Legislature?

18 A No, sir. I don't -- I can't recall
19 of any instance where any organization -- other than
20 the normal and usual lobbying that goes on -- groups
21 expressing their opinions and asking me if I would vote
22 a certain way.

23 Q Reverend Holmes, you, of course,
24 as a member of the Legislature, as any other good member
25 of the Legislature, have voted your conscience and your

Cross - Holmes

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convictions, have you not?

A Yes, I have.

Q Now, had you been elected from a
singlemember district, wouldn't you have done the same
thing?

A Yes, sir, that is true.

Q And, you would have had the same
conscience and the same convictions if you had been
elected from a single member district?

A Yes, sir, I would like to think that
I would.

Q Thank you very much.

A But, I would hope I would have been
more effective in actually doing something about it, too.

MR. LUNA: Many of us think you have
been mighty effective.

1 CE - Holmes

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2 JUDGE GOLDBERG: Anyone else have any
3 questions?

4 MR. COLLINS: We have no other redirect,
5 Your Honor.

6
7 CROSS-EXAMINATION

8
9 BY MR. CROUCH:

10
11 Q Rev. Holmes, Mr. Luna asked you if there
12 had ever been any member of the DCRG, I believe, threaten
13 you about any vote in the Legislature.

14 Now, has any member of the Dallas delega-
15 tion ever threatened to kick you off the slate or see
16 that you didn't get on the slate or get that support that
17 you have testified was essential to your election?

18 A What are you referring to, Mr. Crouch?

19 Q Well, I had heard rumors that there was
20 an incident on the floor of the house in which one of
21 the members of the Legislature questioned your vote and
22 threatened to see that you were off the delegation if you
23 did not vote a certain way on a particular bill.

24 A Oh, yes. I think what you are referring to
25 is an incident that took place during the last of the '69

CE - Holmes

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session when we were voting on the tax bill. This was late in the evening, around 12:00 o'clock, near 12:00 midnight, after we had all been working hard all day long, and there was a procedural rule vote on whether or not to postpone the tax bill. I voted to postpone that bill, because I hadn't read it. It was just placed on my desk, as on all the members' desks just prior to the vote itself, and I recall that one member of the delegation did challenge me on that, so I am sure that this must be what you are talking about, because there were those who witnessed this and know about it, and one member of the delegation did challenge me openly and indicated his disapproval of the way I voted and indicated I should have deferred to him or indicated that.

Q Who was that Representative?

A Representative Ben Atwell.

Q Did he threaten to see that you did not get back on the slate for the next election if you didn't change your vote?

A I don't know if he threatened me -- if it was a threat or just in that way, but -- and I don't recall the exact words here at this point, but I believe that he did indicate that he had some say about who was on the slate as Chairman of our delegation---

1 CE - Holmes

2 Q You got the impression---

3 A ---that he had some influence.

4 Q Is it safe to say you got the impression
5 that you might not be on that delegation if you didn't
6 heed his advice?

7 A Well, I had -- I mean this didn't, you know,
8 arouse any fear or anything in my heart about the way I
9 was going to vote or anything like that. I didn't know
10 what kind of power he had, you know, or what he would do
11 and what effect it would have, except that this was said.

12 MR. CROUCH: Pass the witness.

13 MR. LUNA: May I ask one more question?

14 JUDGE GOLDBERG: Sure.

15 MR. LUNA: It didn't worry you enough
16 that you changed your vote, did it?

17 THE WITNESS: Oh, no, sir, didn't change
18 my vote.

19 (LAUGHTER)

20 JUDGE GOLDBERG: Any other questions
21 of this witness?

22 MR. RICHARDS: No questions.

23 JUDGE GOLDBERG: Then we will go on
24 from here. Let's get the next one.

25 JUDGE JUSTICE: You may stand down, sir.

(WITNESS STANDS ASIDE.)

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1
2
3 MR. RICHARDS: Your Honor, this concludes,
4 I think, at this point our presentation for
5 Dallas. We had hoped to have Councilman Allen,
6 who is still tied in in Dallas, and we will
7 either try to put him on out of order or take
8 his deposition in Dallas tomorrow, I suppose.

9 (To Mr. Cunningham) Is that all right
10 with you?

11 MR. CUNNINGHAM: I had been in contact.
12 His plane came to Austin, and they sent it
13 back to Dallas because of the weather.

14 MR. RICHARDS: We may have to try -- if
15 we can bring him live, we will, because we
16 would like to, but if not, we will try to
17 take his deposition.

18 JUDGE GOLDBERG: Yes, we will just have
19 to meet that problem. What else have you got
20 to offer?

21 MR. RICHARDS: That concludes our presen-
22 tation. We will offer, I think, at the con-
23 clusion of the San Antonio evidence probably
24 jointly a map that is sponsored by both.

25 JUDGE GOLDBERG: Who goes next?

1 JUDGE JUSTICE: Are the Mexican-Americans
2 ready to proceed?

3 MR. IDAR: Yes.

4 MR. RICHARDS: And we offer the exhibits
5 that we have identified and attached and
6 described on our list.

7 JUDGE JUSTICE: They are already in
8 evidence unless there was some objection
9 made which was urged before this Court.

10 MR. GEE: Your Honor, if I might inter-
11 ject, it seems to me to be appropriate at
12 some point that the exhibits for the Republi-
13 cans---.

14 JUDGE GOLDBERG: I thought you asked that
15 they be introduced.

16 MR. GEE: Well, I did, Your Honor, but I
17 wanted to be sure that the list is attached
18 to the Pretrial Order.

19 JUDGE GOLDBERG: Oh, oh, be sure that
20 it is. Give it to the Clerk. I'm sorry.

21 MR. GEE: There is an objection to one
22 of the exhibits, which was noted on there
23 by Mr. Curry.

24 JUDGE JUSTICE: At the time that you
25 present the exhibit, why, Mr. Curry should

1 urge his objection at that time.

2 MR. CURRY: Your Honor, in order to save
3 the time of the Court, they are the standard
4 objections that have been presented earlier
5 to most of the exhibits, and, as I recall,
6 the Court has indicated they will take them
7 under advisement and carry them with the
8 case, so we will let it go at that.

9 JUDGE GOLDBERG: Thank you.

10 MR. LUNA: And we have our exhibits.
11 Rather than interrupt now, may we later give
12 them to the Clerk?

13 JUDGE GOLDBERG: Yes.

14 MR. LUNA: And our amendment to the
15 Pretrial Order.

16 JUDGE JUSTICE: Are you ready to proceed,
17 Mr. Idar?

18
19 TESTIMONY PRESENTED BY THE MEXICAN-AMERICANS

20 MR. IDAR: Ed Idar, Jr., representing the
21 Bernal Intervenor in the Tyler case.

22 I don't feel it is necessary at this time
23 to make any kind of statement, as far as a
24 legal position, Your Honor. We have filed a
25 memorandum, a trial brief.

1 I would like to just touch for a moment 469
2 or two on the depositions that the Court has
3 taken in evidence. I hope that I can be of
4 some service to the Court by pointing out what
5 I consider some general lines that appear to
6 run through some of those depositions that I
7 think are very material to this case.

8 For one thing, as you will read the
9 depositions of the different Board members
10 and the members of their staffs, one thing
11 that seems to come out very clearly is the
12 little consideration that was given to the
13 effects of the plans they were working on, on
14 the minority groups.

15 In some cases testimony was to the effect,
16 "Oh, yeah, we did think about it." It came
17 almost as an afterthought, after Counsel
18 specifically pointed it out to them and allowed
19 them a few minutes to think about it. As an
20 afterthought they pointed out, "Oh, yeah, we
21 took that into consideration, too."

22 Another thing that seems to come through
23 clearly is the fact that little consideration
24 was given by the people involved to whether
25 or not it was desirable to continue with the

1 status quo in the State of Texas as far as the ⁴⁷⁰
2 multimember districts outside of Harris County.

3 Another thing that came clearly through
4 is the fact that at no time until the final
5 plans were before that Board was a policy
6 decision ever made as to whether or not the
7 Board wanted multimember or single member
8 districts. The staff had little or no guidance.
9 There is some testimony by the Attorney General,
10 one or two other people, that he presumably
11 gave them some indication as to what the law
12 was. This was not in writing. Nobody recalls
13 specifically what he said. It appears almost
14 conclusive that the action of the Board ulti-
15 mately resulted or was, in effect, the action
16 of the Lt. Governor and one of his assistants,
17 and the rest of the Board merely ratified it.

18 I think Mr. Calvert testified that he
19 relied largely on the judgment of the Attorney
20 General and the Lt. Governor, as far as making
21 up his mind how to go.

22 Another thing that is very crucial, I
23 believe, two or three of the staff members
24 and Commissioner Armstrong testified that the
25 prime element was very crucial. Mr. Armstrong

1 indicates in his deposition that he abandoned 471
2 his effort to push for a single member district
3 plan when he was told that there was little or
4 no time left in which to come up with a single
5 member districting plan for the other major
6 metropolitan areas aside from Houston. Yet,
7 Mr. Spellings, the Lt. Governor's assistant,
8 testified that he, in effect, starting with a
9 blank map and the help of one other person
10 prepared the entire House Districting Plan,
11 including the major areas and the 23-member
12 districts for Harris County, in less than three
13 days. He started on a Tuesday afternoon about
14 5:00 o'clock, and by Thursday afternoon, the
15 day before the Board finally approved the
16 plan, he was through with the job.

17 A week before that time he had talked to
18 the Attorney General, and at that time he told
19 the Attorney General the time element was such
20 that it was going to be practically impossible
21 to prepare a redistricting plan for the entire
22 state allowing for multimember districts for
23 every metropolitan area.

24 I simply wanted to emphasize those lines of
25 evidence that appear to come through quite clearly

1 in the whole series of depositions that have 472
2 been taken, because one of the positions
3 that we take in our lawsuit is that the Texas
4 Legislative Redistricting Board is not exactly
5 in the position of the Texas Legislature. We
6 didn't have on that Board the inter-play as
7 between House members among each other or among
8 Senators among each other or as between the
9 two houses. We had a decision that is affect-
10 ing the entire State of Texas and is going to
11 affect all of us possibly for the next ten
12 years based on the factors that I have indi-
13 cated to this Court, and the Court will see
14 as they read through these depositions.

15 Now, to proceed, Your Honor, I would like
16 to call Mr. Richard Avena to the stand.

17 JUDGE JUSTICE: What is the witness' name?

18 MR. IDAR: Richard Avena, A-v-e-n-a.

19 JUDGE JUSTICE: Please take the oath, Mr.
20 Avena.
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25

J. RICHARD AVENA,

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a witness called by the Bernal Intervenors, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATIONBY MR. IDAR:

Q Will you please state your full name for the record?

A My name is J. Richard Avena.

Q And what is your position, Mr. Avena?

A I am the Director of the Southwestern Field Office for the United States Commission on Civil Rights.

Q How long have you occupied that position?

A About three and a half years.

Q What did you do prior thereto?

A I was a researcher and translator for the Library of Congress in Washington, D. C.

Q And where were you born and raised?

A I was born in Salt Lake City, and I was raised in El Paso, Texas.

DE - Avena

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Q Have you resided in San Antonio in Bexar County?

A Yes, I have.

Q For how long?

A Approximately three and a half years.

Q Can you tell very briefly -- give us a very brief idea what the U. S. Commission on Civil Rights is.

A The United States Commission on Civil Rights is a bipartisan independent agent set up in 1957. Our mandate from Congress is primarily to investigate complaints of denials of voting rights, denials of constitutional rights, primarily in the area of the 14th Amendment, equal protection of the law.

We have among our duties the serving as a National clearing house for Civil Rights information, and our main function is to report to the Congress and the President of the United States.

Q Are you charged specifically by the Congress with a fact-finding function?

A Yes, we are.

Q What are your own duties briefly in your work for the Commission?

A Well, I am the Director of a five-state area. We have our regional office in San Antonio, and

1 DE - Avena

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2 primarily we work through our State Advisory Committees.
3 We have in each one of our five states an advisory com-
4 mittee that primarily holds hearings and conferences and
5 this type of thing to appraise the national commission
6 on the status of civil rights in that particular state.

7 MR. IDAR: Your Honor, I would like
8 to use this witness for the purpose of
9 introducing a series of publications by
10 the U. S. Civil Rights Commission. I have
11 been advised by Counsel that they are going
12 to have objections to some of these publica-
13 tions. Maybe I will just proceed one by one
14 and see what you---.

15 MR. CUNY: Were these objections by
16 Mr. McDaniel?

17 MR. IDAR: I think he has provided in
18 the Pretrial Orders an objection to the
19 effect that he will object to them on the
20 grounds of hearsay -- I don't know what else.

21
22 (REPORTER'S NOTE: The Court here
23 confer out of the hearing of the
24 court reporter.)
25

1 DE - Avena

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2 JUDGE JUSTICE: I am authorized to
3 say for the Court that we will consider
4 the objections, but you may go ahead and
5 make reference to them.

6 MR. CUNY: And we can just consider
7 the objection in the order as having been
8 made?

9 JUDGE JUSTICE: Yes.

10 MR. CUNY: Very good, thank you.

11 MR. IDAR: I might point out to the
12 Court for the benefit of the Clerk and for
13 the benefit of the reporter here that we
14 used the initials "BI" for Bernal Inter-
15 venors in preparing our exhibits, BI followed
16 by a number and the number of the case.

17
18 BY MR. IDAR:

19 Q Mr. Avena, I am going to show you Plain-
20 tiffs' Exhibit BI-12 and BI-13 and would like to request
21 that you identify them for us.

22 A This is the report from the United States
23 Commission on Civil Rights and its summary of the report,
24 dealing with the administration of justice in the South-
25 west and the Mexican-American. This report was released

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2 in 1970 after two or three years of fact-finding acti-
3 vities, which included questionnaires, visits to law
4 enforcement officers and hearing process.

5 Q Is that an official publication of the
6 U. S. Civil Rights Commission?

7 A It is.

8 Q Does it have any particular restrictions
9 or any guidelines as to how it can be used or for what
10 purpose it can be used?

11 A No, sir, as far as I know, it is a public
12 document authorized by the United States Commission on
13 Civil Rights, a Federal document that can be used at the
14 will of the people.

15 MR. IDAR: I would like to tender those
16 into evidence at this time, Your Honor. I
17 assume they will be admitted subject to the
18 objections that Counsel has indicated.

19 JUDGE JUSTICE: Yes.

20 Q Mr. Avena, I believe you have before you
21 BI Exhibit 149

22 A Yes, sir.

23 Q I wonder if you could identify it for us.

24 A This is a report from the Texas Advisory
25 Committee to the U. S. Commission on Civil Rights released

1 DE - Avena
2 in February, 1976. This is a compendium of the activities
3 of the committee for the previous five or six years and
4 is a summary of what they considered to be the major
5 problems in the area of civil rights in the State of Texas.

6 Q Do you know how the committee went about
7 compiling this information?

8 A Yes, sir, mostly it was based on a series
9 of hearings that the committee held throughout the state
10 dealing primarily with problems facing blacks and Mexican-
11 Americans.

12 Most of the information was taken from a
13 six-day hearing that was held by the Commission, not by
14 the committee, not by the Advisory Committee, but by the
15 Commission in San Antonio in 1968.

16 JUDGE GOLDBERG: What is the earliest
17 date of the hearings? I served on that
18 Commission — I became a member of the
19 Court in 1960. Do you have any material
20 prior to that involved here?

21 THE WITNESS: The information in this
22 particular report primarily is from about
23 '65 on, sir.

24 JUDGE GOLDBERG: Any objection?

25 I served until I was appointed on the
Court.

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1 DE - Avena
2 THE WITNESS: You served on the
3 Advisory Committee?

4 JUDGE GOLDBERG: Yes. I was appointed
5 to the Court in 1960. Does the material
6 cover anything prior to 1960?

7 THE WITNESS: Sir, as far as I can
8 tell, it doesn't, but I cannot actually
9 say, because I have only been with the
10 Commission about---

11 JUDGE GOLDBERG: Any objection?

12 MR. CUNY: These Defendants won't
13 raise an objection, Your Honor.

14 MR. IDAR: Sorry, Your Honor. I didn't
15 realize we were going to have that come up.

16 (No omission here.)
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1 D. E. - Avena

2 Q I believe you also have BI Exhibit Number
3 157

4 A Yes, sir.

5 Q Would you please give us a brief idea of
6 what it consists?

7 A This is first a series of about five or
8 six reports by the Commission on the problems of Mexican-
9 Americans in the area of education. Now these reports
10 will deal with problems of education throughout primarily
11 a five-state area-- five states of the Southwest. This
12 is the first report that deals primarily with numbers
13 or what is called ethnic isolation; segregation of
14 Mexican-Americans by district, by schools, by classrooms
15 and by classes and curriculum and so forth.

16 JUDGE GOLDBERG: Anything to do with the
17 election?

18 A No, sir.

19 JUDGE GOLDBERG: I just want to know what
20 kind of documents we are dealing with here.

21 MR. IDAR: Well, I was going to ask him
22 about this particular one.

23 Q Isn't there a section in that particular
24 report that relates specifically to Bexar County?

25 A Yes, sir. There is a section that deals

1 D. E. - Avena

2 with Texas and Bexar County and it talks about the ethnic
3 isolation of Mexican-Americans studied in Bexar County.

4 MR. IDAR: I might point out to the Court
5 that one of the reasons we are tendering this
6 type of evidence is in light of the fact that
7 our pleadings have not yet been answered. As
8 far as I know the stated has not conceded
9 jurisdiction or the issues relating to a class
10 that we alleged before this Court. Therefore,
11 we feel it incumbent upon us to show that we do
12 have or that we do represent a class of people
13 that have common problems that have been
14 affected by certain situations causing injury
15 and deface of character in the State of Texas.
16 We have a state-wide class and we also have
17 classes in specific areas, and I believe that
18 this information would relate to those issues.

19 JUDGE JUSTICE: As I understand it, the
20 State made no objection to the maintenance of
21 your suit as a class action, subject only to
22 proof that there was a-- such a class.

23 MR. IDAR: That is exactly what I am
24 seeking.

25 JUDGE GOLDBERG: And in truth and in fact,

1 D. E. - Avena

2 if it wasn't a class action, these suits are
3 still cognizable.

4 MR. IDAR: Yes, sir. We offered the pleadings--

5 JUDGE GOLDBERG: --It looks to me like we are
6 talking about something that is not overly
7 important, but go ahead.

8 MR. IDAR: Well, I am just trying to support
9 my class allegations with this type of evidence.

10 JUDGE GOLDBERG: Go ahead.

11 BY MR. IDAR:

12
13 Q Let's see. Was that Number 15-- the last
14 one?

15 A Yes. This was 14-- yes. BI 15.

16 JUDGE GOLDBERG: In Chavis, they denied
17 a class action. They took a straight suit.

18 MR. IDAR: That is the reason why--

19 JUDGE GOLDBERG: --But that is all right
20 with me. If you want prove it up, go ahead.

21 Q We have another report there which is BT
22 Number 167

23 A Yes, sir.

24 Q Would you please indicate--

25 A --This is Report Number 2 of the Commission

1 D. E. - Avena

2 which deals with such things as drop-out rates, the
3 holding power of the schools, achievement levels, reading
4 levels, this type of thing in the Southwest. It also
5 deals with Bexar County and Texas as a whole.

6 MR. IDAR: I might also mention, Your Honor,
7 at this time that I have been informed-- I
8 haven't seen this-- maybe I just picked up a
9 wild rumor, but it is my understanding that a
10 three-judge federal court in Alabama either
11 yesterday or today ruled on this type of case
12 and it is my further understanding that--

13 JUDGE GOLDBERG: We are in the process
14 of getting that opinion now.

15 SENATOR MAUIY: Your Honor, we are reviewing
16 it in the Clerk's office at the moment.

17 MR. IDAR: It is my understanding that
18 issues of discrimination of different groups
19 there are very much involved in the lawsuit and
20 that is another reason why we are seeking this
21 type of evidence before the Court.

22 Very quickly, Your Honore, I would like to
23 save the time of the Court by tendering our
24 exhibits BI 18, BI 19 and-- well, these two, in
25 particular. The first one, BI 18, is a record

D. E. - Avena

of the hearings before the subcommittee on executive reorganization of the Committee on Urban Operations of the United States Senate.

JUDGE GOLDBERG: Dated?

MR. IDAR: June the 11th and 12th, 1969.

And this relates to legislation that was designed to establish an interagency committee on Mexican-American affairs.

And we have another work here prepared by Fred H. Smith, entitled Spanish Surname of American Employment in the Southwest. That is our Exhibit BI 19. And we would like to tender these two, and I also have here a Xerox copy of a report prepared by the Texas Legislative Council dated January, 1969, which relates to employment in the state government and it is supposed to be statistical survey by ethnic origin. It indicates the breakdown by state agencies, the number of Mexican-Americans and black people that each state agency employs; the job categories and salaries and so forth.

MR. CUNRY: Is that Number 207

MR. IDAR: This is 11. I am sorry.

JUDGE JUSTICE: They will be received in

1 D. E. - Avana

2 evidence subject to the objections.

3 Q Okay. There is one more that I would like
4 to show you, Mr. Avana. SI Number 177

5 A Yes, sir. This is the transcript of the
6 six-day hearing that was held in San Antonio, December
7 9th to 14th, 1968, by the Commission, itself.

8 Q And those were hearings dealing specifically
9 with what?

10 A The hearings dealt exclusively with problems
11 facing Mexican-Americans primarily in the State of Texas
12 and to some degree in Bexar County. The hearings were
13 divided into four major sub-areas: discrimination in
14 employment, education, economic security, the whole area
15 of federal programs, and how they are reaching the people
16 and the administration of justice.

17 MR. IDAR: I would like to tender that,
18 also, Your Honor.

19 JUDGE JUSTICE: Subject to the objections,
20 it will be received in evidence.

21 Q All right. Now Mr. Avana, let's move on.
22 Based upon your experience with the Commission, your
23 knowledge of the work that the Commission has done, your
24 own investigations and the familiar-- I presume you are
25 familiar with most of the exhibits we have just introduced?

1 D. E. - Avena

2 A Yes, I am.

3 Q Can you give this Court some idea as to
4 condition of the situation of the Mexican-American
5 population in Bexar County, Texas? Can you give us some
6 idea of where it is concentrated?

7 A Yes. We did a survey of the population--
8 Mexican-American or surname population, based on the 1960
9 figures which we have updated this material yet from the
10 1970 census. We found most of the Mexican-Americans
11 living in the primarily western part of San Antonio.
12 They have much lower income level than the rest of the
13 population of Bexar County. Much lower grade in school
14 attainment, much lower-- much higher degree of unemploy-
15 ment. Much higher percentage of these people of this
16 type in this area, for example, working in menial type
17 jobs and this type of thing.

18 Q Do you have any idea as to the concentration
19 as to the Mexican-American concentration in the State
20 of Texas?

21 A Primarily seventy to seventy-five per
22 cent of the Mexican-Americans in Texas live in the
23 Southwestern part of the United States; primarily those
24 seventeen or nineteen counties bordering Mexico.

25 Q All right. Do you have any idea as to the

1 D. E. - Avana

2 median income on a statewide basis?

3 A The median personal income in 1960, I think
4 was approximately \$1,500.00. Median family income, I
5 think, was closer to \$2,500.00. This was roughly fifty-
6 five to sixty per cent of the Anglo median income for
7 the same groups.

8 Q As between the Mexican-American say living
9 in your say smaller urban communities or cities, and your
10 farm workers, can you give this Court some idea whether
11 or not there is a distinction as to the conditions
12 affecting those in the cities and towns as contrasted to
13 your farm worker or migrant population?

14 A I think, for example, most of the Mexican-
15 Americans in Texas are urban. Three-fourths live in
16 communities of 10,000 or more. A third of all Mexican-
17 Americans in Texas live in three metropolitan areas,
18 San Antonio, Houston and El Paso. As far as the migrant
19 population, the State of Texas estimated in 1965 approxi-
20 mately 167,000 migrants in the state and over ninety per
21 cent of these were with Spanish surnames, assuming most
22 of those were Mexican-American. And I would say that
23 the Mexican-American farm worker, like all farm workers
24 in the State of Texas, is suffering a discrimination in
25 that he is not adequately covered by most of the employment

1 D. E. - Avena

2 laws that are designed for other employees in the state.

3 Q What are some of the state statutes that
4 have not been enacted that, in your estimation, would
5 help eliminate some of the problems of the migrant--
6 agricultural migrant?

7 A Well, you have no state unemployment
8 compensation laws, disability, for example. You have
9 no state housing standards for migrant workers. You have
10 a minimum wage law that was recently passed that covers
11 farm workers, but in my estimation it is inadequate.

12 Q Why do you say that?

13 A For example, there is a federal minimum
14 wage law that covers farm worker, but the farmer has to
15 have used in the past calendar year, in any one quarter,
16 five hundred man-days of farm labor. Now the state
17 statute, as I understand it, covers those farmers that
18 do not have-- have not used five hundred man-days in the
19 preceeding calendar year, but only with a carefully
20 described condition, and that condition is that the
21 farmers must have used three hundred man-days in every
22 single preceeding calendar year quarter. This means
23 most of your farmers in the State of Texas have one
24 quarter in which they have used no farm labor at all
25 and they are exempt from the statute.

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2 Q Do you have any idea of the employment rate
3 of the Mexican-American in San Antonio or Bexar County?

4 A The unemployment rate?

5 Q Yes.

6 A The latest figures, I think, for example
7 came in 1966. I think the United States Department of
8 Labor did a study in a particular area of west San
9 Antonio. They found here that the unemployment rate
10 was eight per cent when the unemployment rate for the
11 city as a whole was four per cent, I believe. They also
12 found that there were about twenty-five per cent of these
13 people unemployed that had not worked for six months or
14 so. Eighteen per cent, I think, of them-- there were
15 a larger percentage of these, that were working only
16 for a time. I think it was eighteen per cent. Also, for
17 example in the west side of San Antonio, where most of
18 your unemployment is, there was what we would call a
19 nonparticipation rate of about nine per cent. That is,
20 people who could work but are not working-- not looking
21 for jobs. Therefore, they are not included in the unem-
22 ployment rate.

23 Q Are you personally familiar with what is
24 generally known as the west side of San Antonio?

25 A Yes, sir, I am.

D. E. - Avena

Q Would it be fair to categorize that area as a slum area or ghetto?

A Yes, sir, it would.

Q Are you familiar with the type of housing that is to be found in that area?

A Generally familiar, yes.

Q Do you have any figures that could give this Court some guidance as to the value of the housing, and the conditions of the housing?

A Well, the figures we used in the presentation of the hearing, and again this way the '60 census figures, and the figures pointed out, for example, in the City of San Antonio as a whole, remembering again that most of the Mexican-American and larger percentage of the poor Mexican-Americans live in the west side area, only sixty per cent of the Mexican-Americans in San Antonio lived in what your federal agencies would consider to be safe and sound housing. Mexican-Americans more than Anglos in San Antonio, for example, are apt to live in dilapidated, unsafe housing, overcrowded housing.

Q Are we talking about the west side?

A We are talking about primarily the west side, where most of the poor Mexican-Americans live.

Q All right. What about health conditions

1 D. E. - Avena

2 in that particular area of San Antonio?

3 A Again, the figures point out that Mexican-
4 Americans in San Antonio are more apt to suffer from
5 diseases such as pneumonia, diabetes, and Mexican-American
6 children are more apt to suffer from child diseases and
7 consequences thereof, than the other children in San
8 Antonio.

9 Q Can you give us a very brief idea as to
10 the educational condition of the Mexican-Americans in
11 San Antonio and this particular area of San Antonio we
12 are talking about?

13 A Yes. Again, for the hearings, we prepared
14 a study of nine school districts in San Antonio and
15 these nine districts, we found that the Mexican-American
16 primarily was segregated; not only by district. You had
17 two or three districts that had most of the Mexican-
18 Americans, but they were segregated by schools. You have
19 in one large district, for example, the San Antonio
20 Independent School District, you have schools that are
21 almost a hundred per cent Mexican-American. In the same
22 district, the schools that are almost one hundred per
23 cent Mexican-American, are a quarter of a century older
24 than the schools that have a lower percentage of Mexican-
25 Americans.

D. E. - Avena

Q What about the nature of the school administration in that area?

A With the exception of one school district in San Antonio, all of the superintendents are Anglos. Most of the Boards are Anglos. I think there is only-- there are two that I know of, chairmen of school boards in San Antonio area that are Mexican-Americans.

Q Do you know anything as to the achievement level of the students in those so-called Mexican-American schools?

A Yes. It seemed in our study, we found that the higher the degree of segregation, for example, of Mexican-Americans in schools, the lower the achievement level of the child, the reading level, the testing level and this type of thing. And not only that, in your integrated schools that had say forty or fifty per cent Mexican-American, you would also find mostly with the Mexican-American, many cases the Black student who achieved at a lower level than the Anglo student.

Q Do you know anything as to the drop-out rate as to the schools involved in west San Antonio?

A Two of your school districts, San Antonio Independent School District and Edgewood, accounted for seventy-four per cent of all of the drop-out rates in all

1 D. E. - Avena

2 of these nine districts we studied, and these are the
3 two districts that had most of the Mexican-Americans.

4 Q Incidentally, you have mentioned the
5 Edgewood School District. Is it not true that Plaintiffs
6 involved from that particular district were recently
7 involved in a decision by a Federal District Court, a
8 three-judge court in San Antonio, that is going to affect
9 the entire financing structure of the State of Texas?

10 A Yes, sir.

11 Q Specifically with respect to employment in
12 San San Antonio, are you familiar with a study that was
13 made of certain restaurant employment practices?

14 A Yes, sir. Again, we did the survey. We
15 had been told that if you were to go to a restaurant in
16 San Antonio, for example, you would find a pattern and
17 the pattern that we were told was that when it came to
18 employees who dealt specifically and directly with the
19 people, you would find very few Blacks and Mexican-
20 Americans. You would find most of the Blacks and Mexican-
21 Americans washing the dishes and serving as busboys. So
22 we took several restaurants in San Antonio, specifically
23 looking for restaurants that did not serve a particular
24 type of ethnic food, and surveyed these and we found
25 this pattern to be true. And I think it was about fifteen

1 D. E. -Avena

2 restaurants with over three hundred employees in San
3 Antonio.

4 Q Can you also give us some brief idea as
5 to the administration of justice as it affects a Mexican-
6 American, based on the findings of the Commission?

7 A The reports given from our findings-- also
8 we heard testimony at the hearings held in San Antonio--
9 that Mexican-Americans, for example, were throughout the
10 Southwest suffering from cases of excess brutality by
11 police officers, both state and local officers. We
12 found Mexican-Americans misrepresented in juries. We
13 found that in many cases your courts, federal, city,
14 county and state courts, did not have many Mexican-
15 Americans working there as clerks and interpreters and
16 whatever. We also found that the mail system did not
17 effectively reach the Mexican-Americans and that many
18 Mexican-Americans did not have access to adequate mail.
19 I have found and we have found in the report, the lack
20 of representation, legal representation for Mexican-
21 Americans. I know a lot of case, for example, of alleged
22 police brutality, particularly in your smaller communities
23 where lawyers will not take these cases because they feel
24 they will jeopardize their relationship with the enforce-
25 ment authorities in that area.

1 D. E. - Avena

2 Q Is there a program relating to police
3 brutality in San Antonio?

4 A In my estimation there is, yes.

5 Q Is that true of your west side?

6 A That is true primarily of your west side
7 and south side and I would say also the east side where
8 most of the Black community lives.

9 MR. IDAR: That is all, Your Honor.

10 JUDGE WOOD: Any questions?

11 MR. LIMA: I don't have any questions,

12 Your Honor.

13 CROSS EXAMINATION

14 Questions by Mr. Curry:

15
16 MR. CURRY: Thank you, Your Honor.

17 Q Excuse me, sir. Did I understand your name
18 is Avena?

19 A Avena.

20 JUDGE WOOD: You had better identify
21 yourself for the record.

22 MR. CURRY: My name is Al Curry and I
23 represent the State-- one of the Defendants.

24 Q In connection with these problems that you
25 identified, Mr. Avena, have you been instrumental in

1 C. E. - Avena

2 initiating any particular suits in the courts to rectify
3 these problems?

4 A No, sir. Our agency is a nonenforcement
5 agency. We have no enforcement authority whatsoever. If
6 there are any suits to be filed on behalf of the govern-
7 ment, this is done by the Justice Department.

8 Q Does your agency communicate with enforcement
9 agencies with respect to these matters?

10 A Yes, we do.

11 Q And have you personally participated in
12 this?

13 A Yes, sir.

14 Q And does your agency, and I don't mean it
15 derogatorily, but does your agency lobby for these
16 purposes in the State Legislature?

17 A For what purposes?

18 Q To alleviate the problem you just stated.

19 A The agency does not lobby. Sometimes,
20 from time to time, we will have members of our advisory
21 committee, for example, Mrs. Young who was just formally
22 relieved as chairman of our committee, in the past has
23 testified before the State Legislature at the request of
24 certain chairman of committees or subcommittees on a
25 variety of issues.

1 C. E. - Avena

2 Q Mr. Avena, I am sorry, but we have misplaced
3 an exhibit which I understand designated those Mexican-
4 Americans serving in elected offices in Bexar County,
5 Could you identify for the Court the individual Mexican-
6 Americans that serve in public office and what position
7 they hold?

8 A In the State Legislature?

9 Q State Legislature and/or city or school
10 offices.

11 A We have one state senator, Senator Joe
12 Bernal. And we have a-- I think three members of the
13 City Council. And several members of school boards there.

14 Q How many members are there of the city
15 council?

16 A I think there are nine altogether or seven.
17 I am not sure.

18 Q Have you made a study of the population of
19 Bexar County as far as the breakdown between Mexican-
20 American, Blacks and Anglos?

21 A The study is primarily of the San Antonio
22 metropolitan area.

23 Q All right. What would be, based upon your
24 research, the percentage of the ethnic breakdown, Anglo--

25 A I think your 1960 census would show about

1 C. E. - Avena

2 a forty-three or forty-four per cent Mexican-American
3 and about five or six Black and the rest Anglo. The
4 Office of Economic Opportunity in 1962, I think if you
5 would check with them, would be closer to fifty per
6 cent Mexican-American.

7 JUDGE WOOD: How much would be Black?

8 A About six to seven per cent.

9 JUDGE WOOD: Six or seven?

10 A Yes, sir.

11 Q And this was in 1966, which was a projection?

12 A Yes, sir.

13 Q Now, as I understand it, and I think the
14 Court has been made aware at least or at least His Honor,
15 Judge Justice has, that there is some anticipation that
16 a report from the 1970 census report on Mexican-Americans
17 only is anticipated shortly, but based on your experience
18 in San Antonio and the information you have, are you of
19 the opinion whether or not at this time, the Mexican-
20 American community population exceeds that or is more
21 than fifty per cent?

22 A It is my personal opinion that it is about
23 fifty or a little bit more than fifty per cent at this
24 time.

25 Q All right. Now, have you made any studies

1 C. E. - Avena

2 to determine the percentage of registration, voter regis-
3 tration in the Mexican-American community in Bexar
4 County?

5 A No.

6 Q You cannot tell the Court to what degree
7 the-- in terms of comparison, Mexican-Americans partici-
8 pate in the voter registration?

9 A In registered voters, I wouldn't consider
10 myself qualified.

11 Q All right. Do you have or have your
12 studies reflected any percentage of voting aside from
13 percentage of voting registration-- the percentage of
14 Mexican-Americans that vote in elections?

15 A No, we have not.

16 Q You have no opinion one way or the other
17 or no information at all?

18 A Well, my own opinion is that that is
19 probably your percentage of participation in Bexar
20 County is higher than say a community with a much
21 smaller percentage of Mexican-Americans. That is my
22 own opinion.

23 Q But you don't have any figures you can
24 give the Court?

25 A That's right. I do not.

1 C. E. - Avena

2 Q Where do you live in San Antonio?

3 A 510 Bloomfield.

4 Q Is that on the west side?

5 A It is on the northwest side.

6 Q Northwest side? That would be Shavano
7 Park area?

8 A No. It is right off of Bandera Road on
9 the northwest.

1 Cross - Adena

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2 Q To your knowledge, have there been
3 any candidates recently seeking to run or have their
4 names put on the ballot to be elected from the area
5 in west -- West San Antonio -- for Senate Legislative
6 offices?

7 A In the last legislative race, I am
8 familiar with the particular candidate who worked for
9 the Edgewood School District who ran. I am sorry, but
10 I am not qualified to say where he lived, so I don't
11 know exactly where he lived. He was a Mexican-American.

12 Q Mr. Adena, you understand that one
13 of the issues before this Court is whether or not Bexar
14 County should have single member districts?

15 A Yes.

16 Q Or multimember districts? You
17 understand that?

18 A That's right.

19 Q And, you understand the distinction?

20 A That is right.

21 Q I haven't heard you express an
22 opinion on the distinction, but I will ask you this.
23 Isn't it conceivable that in Bexar County, particularly
24 and specifically Bexar County, where the Mexican-American
25 population is in your opinion 50 percent or slightly

1 Cross - Adena

2 over 50 percent --

3 A Sir, let me correct you on that.

4 I didn't say in my opinion it was over 50 percent in
5 Bexar County. It said it was over 50 percent in the
6 City of San Antonio.

7 Q Do you know what it is relating to
8 the County?

9 A I sure don't.

10 Q Would you not still, though, state
11 that the Mexican American community is the largest group
12 in Bexar County, in percentages?

13 A In the entire county? It could be
14 very equal to the white Anglo community.

15 Q So, in Bexar County, the distinction
16 between the ethnic groups, Mexican-American and Anglo,
17 is pretty much on balance?

18 A I would say roughly so.

19 Q So that to the extent that people
20 participate in the legislative processes, in terms of
21 voting and electing multi-member districts, would
22 necessarily have to make the Mexican-American group
23 as effective in terms of total potential voting power,
24 in effect, as the white vote, is that correct?

25 A I am not sure I understand your

1 Cross - Adena

2 question.

3 Q I probably didn't make myself
4 clear. My point is this. I will call it the "Anglo
5 population" is equal to and not greater than the Mexican-
6 American population in Bexar County?

7 A Uh-huh.

8 Q And then, they are on equal footing,
9 as far as potential votes and participation in electing
10 members to the Legislature?

11 A Well, I don't think it is that
12 simple. I think that --

13 Q I understand. Excuse me. I under-
14 stand that it is not a simple matter, but I am asking
15 in terms of numbers, if, in fact, the population per-
16 centages are equal, then the potential votes, perhaps,
17 ought to be equal?

18 A I think it would probably lean
19 toward being unequal toward the Mexican-American,
20 because I think in Bexar County, there is a sizeable
21 portion of Mexican-Americans who are not citizens and
22 who do not vote.

23 Q Do you have any idea what that
24 percentage is?

25 A I don't know, sir.

Cross - Adena

5.4

Q And, what is the percentage of Blacks?

A I think it is from -- roughly right now, -- about six to seven percent.

Q Of the total county population?

A Of the City population. I think that holds pretty close for the County as well.

Q Do the Mexican-Americans in Bexar County usually vote the Democratic ticket in legislative races?

A I think that would be a safe assumption.

Q Do the Black ethnic group voters in Bexar County normally vote the Democratic ticket in legislative races?

A I couldn't positively say.

MR. CUREY: We have no further questions.

JUDGE JUSTICE: Is there any redirect examination?

MR. IDAR: No, sir, Your Honor.

JUDGE JUSTICE: You may stand down, sir.

MR. IDAR: I would like to call Mr.

George Korbel, but I would like to have a couple of minutes to get some exhibits into the Courtroom.

(There was a recess at this time).

JUDGE JUSTICE: Mr. Marshal, would you check to see what progress he is making to get his exhibits in here?

THE MARSHAL: Yes, sir.

JUDGE JUSTICE: Let me have the attention of counsel, please. Arrangements have been made through the intervention of Judge Wood, with Judge Suttle, that Mr. Barrera will be here in the morning at 9:00 o'clock. Judge Suttle has requested that we ought to take the witness out of order so that he may be returned to San Antonio at the earliest possible time. Is there any objection to that procedure? All right. Notice is given, then, that Mr. Barrera will be the first witness tomorrow morning. May I ask counsel about how many witnesses do you intend to present in connection with your case?

MR. IDAR: I would have Mr. Korbel

and I will have one more witness, and possibly one in rebuttal after the State presents their case.

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JUDGE JUSTICE: Are you able to anticipate how long the remainder of your case will take? We are trying to approximate when we will get through here.

MR. IDAR: I would estimate that Mr. Korbai, Your Honor, I don't know about cross examination, but hopefully, it shouldn't take more than an hour or so, and the other witness will be an expert which on direct examination, again, probably half an hour to 40 minutes, about.

JUDGE JUSTICE: You anticipate safely speaking, you will be through about noon tomorrow?

MR. IDAR: Yes, we should be.

JUDGE JUSTICE: Are the Republicans able to give us an estimate as to how long it will take for that case to be presented?

MR. RASON: Your Honor, that is what I was approaching the electrum about. We have sued both on the legislative and the Senate redistricting. Certain elements of

my case, naturally, will be covered by Mr. Idar. I will try not to burden the Court, in the interest of time, with additional questions to the witnesses insofar as it pertains to my case, and we will adopt the testimony of Mr. Idar's witnesses, insofar as it affects our case in the legislative part.

JUDGE GOLDBERG: It shouldn't take long, then?

MR. EASON: That is what I am hoping, Your Honor. And, that is the reason I have been asking questions of the various expert witnesses, in order to establish --

JUDGE JUSTICE: We want counsel to develop their case. We are just trying to understand how long it will take.

MR. EASON: That portion of my case--

JUDGE JUSTICE: How long, Mr. Crouch, how long will it take to present your case?

MR. CROUCH: I think it will -- we can do our direct case in two hours.

JUDGE JUSTICE: All right.

JUDGE WOOD: How about the Defendants rebuttal?

1 MR. CUNY: Your Honor, 5:8

2 Mr. McDaniel will be primarily responsible
3 for the Mexican-American defense. And, I
4 know he has, of course, Mr. Barrera. He
5 has, I believe, one other witness for sure,
6 and I am not certain about that. But, my
7 guess is that perhaps two hours, maybe
8 perhaps a little bit more.

9 JUDGE WOOD: We could finish
10 tomorrow, then, perhaps?

11 MR. CUNY: I would think so. The
12 defense, as far as the Dallas suit is con-
13 cerned, is joint, so we would be relying
14 primarily on Mr. Luna.

15 MR. LUNA: I would think that the
16 direct examination in that connection would
17 take less than two hours.

18 JUDGE GOLDBERG: We can finish
19 tomorrow, then.

20 JUDGE WOOD: There is no doubt
21 we can get through, without a night session,
22 by noon Thursday?

23 MR. CUNY: I think so. Do you mean
24 the defense finishing?

25 JUDGE WOOD: I mean the whole case.

I am anticipating for their

rebuttal -- Finishing the direct for all sides tomorrow and the rebuttal, perhaps, for the Plaintiff on Thursday. Do you feel like we could get through by noon Thursday so we could start the arguments by noon Thursday?

MR. CUNY: That is my opinion.

JUDGE WOOD: Is that your opinion? Is that your best opinion, gentlemen?

MR. LUNA: It kind of sounds like they will be through by noon tomorrow, if so, that could be --

JUDGE JUSTICE: There still remains the Republicans, though.

MR. CUNY: If we work tomorrow night as the Court has indicated we will, I am sure we will finish.

MR. LUNA: He is talking about maybe not working tomorrow night.

JUDGE JUSTICE: All right. Proceed, counselor. Has the witness been sworn?

THE CLERK: Yes, sir.

GEORGE KORBEL,

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a witness called by Mr. Idar, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATIONQUESTIONS BY MR. IDAR:

Q Please state your name for the record.

A George J. Korbel.

Q Where are you from, Mr. Korbel?

A I am from Brackensridge, Minnesota.

Q How long have you resided in Texas?

A About 7 weeks.

Q And what are you doing in the State of Texas?

A I am presently a Vista lawyer, I am assigned to the Mexican-American legal defense fund.

Q And, where did you go to school?

A I went to college at St. John's University in Collegeville, Minnesota, I received a B.A. there in political science and a minor in philosophy.

Direct - Korb

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and I attended Law school at the University of Minnesota, I graduated from there in 1968. I was admitted to the Bar in Minnesota, I believe in September of 1968. I have been active in full-time private practice of law since September of 1968.

Q Have you had any experience in practical politics in your home state of Minnesota?

A Yes. I have had, I think, substantial experience.

Q Of what nature?

A Well, while I was in college, I was an officer in our college Democratic organization. I was one of the organizers and founders of the Minnesota Democratic organization. After I left law school, I was the -- from 1969 until I came down here to Texas -- I was the Wilcox County Democratic Chairman, I was an elected member to the Minnesota State Democratic Executive Committee. You will have to excuse me, because I have a hoarse throat.

Q In connection with your activities in Minnesota, did you ever have occasion to get involved in analyzing electoral type data?

A Yes. For the 1970 election I was involved in a state-wide computer survey of all voters

Direct - Korb

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in Minnesota. We attempted to analyze, through about a 45 second to one minute telephone conversation with every voter, his political trends and his political tendencies so they could be contacted shortly before the election on election day to make sure they voted. It was a very practical and very effective, I might add, survey.

Q All right. Now, we have certain exhibits in the Courtroom. Were you primarily responsible for the preparation of these exhibits?

A Yes. I was mainly responsible for setting these exhibits up. I had three law clerks, who are full-time students at St. Mary's University School of Law, assisting me. We had several college graduates and I had, I would say, five or six persons attending college helping. At one time I think we had 15 or 16 that were working under my direction.

Q I am going to call your attention to the DI exhibit Number 1.

A Yes.

Q And, can you briefly describe what this exhibit purports to represent?

A That exhibit represents several things. First of all, in the lower left-hand corner --

1 Direct - Korbal

2 JUDGE JUSTICE: I wonder if that
3 exhibit could be raised up? Thank you.

4 A In the lower left-hand corner of
5 the exhibit is inscribed "27 contiguous census tracts",
6 each having a Mexican-American population of 50 per-
7 cent or greater. The exception to that are two small
8 tracts which we throw in there to make it more
9 contiguous; they have Mexican-American populations of
10 34 or 35 percent respectively.

11 Q What would the area that is
12 encompassed in Black indicate?

13 A The area encompassed in black indi-
14 cates San Antonio's substantial Black population.

15 Q Do you have any idea how many census
16 tracts were involved in that?

17 A I believe that that particular tract,
18 the way it is described, is 6. I am not sure about that.

19 Q All right.

20 A I think it is either 6 or 7.

DE - Korb

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BY MR. IDAR:

Q What does the green area designate?

A The green indicates the predominant white or Anglo area of San Antonio lying to the north and to the northwest primarily, and also to the south and to the southwest. Generally speaking, the tracts for the north and northwest you go, the higher percentage of Anglo or white population. That area---

Q I notice, though, there is one blank area left in here. Is there any reason for that?

A That is more or less a no man's land, I guess. You have got a mixed population of blacks, whites and Anglos. Predominantly to the north of the red area is a mixture of Mexican-Americans and Anglos, and to the right of the red area is a mixture of blacks and Mexican-Americans. We also find substantial pockets of blacks located within the red boundaries.

MR. IDAR: O. K. If we can set that down for a minute.

JUDGE JUSTICE: What is that exhibit?

MR. IDAR: That is Exhibit BI-1, Your Honor.

Q I would now like to call your attention, Mr. Korb, to Exhibit BI-1.

1 DE - Korbrel

2 A Yes, sir.

3 Q Just give the Court a general idea of what
4 that exhibit is all about. We will get into the specifics
5 later.

6 A Yes. Again, that is -- to the lower left-
7 hand corner is inscribed the 27 contiguous census tracts.

8 Before I go on, I might say that there are
9 27 contiguous census tracts under the 1960 census. and one
10 census tracts, the one farthest to the left, which is now
11 divided in two, was single in '60 and has been divided in
12 '70, so, technically speaking, since this is lying on a
13 1970 map, there are 28 contiguous census tracts within that
14 area.

15 Q Now, I would like to question you as to the
16 sort of data that you compiled or that you used in the
17 compilation of the data that went into the preparation of
18 this exhibit.

19 For that purpose I would like to have you --
20 I am going to show you Plaintiffs' Exhibit BI-3 and see if
21 you can tell us what it represents.

22 A Yes, this is a photocopy of a computer print-
23 out which I myself personally made at the Alamo area
24 Council of Governments Office, which is located in the
25 Three Americas Building.

DE: Korbel

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It is a study done by the Texas State Highway Department, which indicates median incomes by census tract. I might suggest that those are 1970 census tracts, rather than 1960 census tracts. There is a difference in numbering, but substantially they coincide as far as streets are concerned.

JUDGE WOOD: What exhibit number is that?

THE WITNESS: That exhibit is No.

BY-3 -- 143.

Q Did you have occasion to show this particular exhibit to Mr. McDaniel?

A Yes, Mr. McDaniel and I discussed this exhibit. It was my understanding he would have no objection to it since this is the State's own study.

MR. IDAR: We would like to tender that.

MR. CURRY: It is not listed?

MR. IDAR: Yes, it should be listed on the Pretrial Order.

MR. CURRY: May I see it?

THE WITNESS: Yes, it is my understanding -- we worked with this photocopy, rather than discover the computer tape of the computer

DE - Korbelt

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print-outs the State had.

(REPORTER'S NOTE: Counsel examines exhibit.)

MR. IDAR: We are tendering that at this time.

JUDGE JUSTICE: It is already in evidence if there hasn't been any objection made to it, if it is listed in the Pretrial Order.

Q O. K. Now, I would like to show you another exhibit, Mr. Korbelt, which is identified as BI-4.

A Yes, this is another photocopy of the census print-out, 1970 census print-out, and this is entitled Population Characteristics 1971 Census. The date is 5-11-71. I also made this copy myself at the Alamo area Council of Governments Office located in the Three Americas Building, San Antonio, Texas. It is from the official Government computer tape. I'm not sure which one this is.

MR. CURRY: Excuse me, Mr. Idar. I am under the impression that you are having these identified for the purpose of tendering them into evidence.

MR. IDAR: Yes.

DE: Korbelt

MR. CUREY: It is my understanding from the Court that they are in evidence subject to whatever objection was put into your Pre-trial Order and that it is not necessary to go through with this witness these things unless you want to ask him specific questions about them.

MR. IDAR: No, I just wanted him at this time to familiarize the Court with the nature of the information that he used in the preparation of the exhibits.

MR. CUREY: I'm sorry. I didn't mean to interrupt. I just didn't want to make it unnecessarily long.

BY MR. IDAR:

Q I would now show you Plaintiffs' Exhibit BI-5 and I would like to have you describe it briefly so the Court will have some idea what we are talking about.

A Yes, sir. Again, this is another photocopy of the census print-out entitled Housing Characteristics - 1970 Census, dated 3-11-71.

Again, this is a photocopy of the census print-out made at the Alamo Area Council of Governments.

DE - Korbelt

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Q And here is BI-6.

A Yes. This, again, is a photocopy of another census print-out. It is entitled Count of Owner Occupied United by Value - 1970 Census, dated 5-11-71.

Again, I made this photocopy myself at the same place from the same tapes.

Q And I believe I laid a folder there which should be BI-7.

A Yes. This is BI No. 7. This is a document which we received from the State. We were unable to get it ourselves. It is evidently a preliminary running of some kind of some demographic data dealing with Bexar County.

It is my understanding the State has these available for the entire State of Texas. Because of the shortness of time, we only dealt with Bexar County.

Q I would show you now BI-8 and have you identify it.

A Yes. This is a photocopy of a pamphlet put out by the Department of Census based on the 1960 census data. Its citation is U. S. Bureau of the Census, U. S. Censuses of Population and Housing, 1960, and this is basically a study of all the SMSA's, that is to say, Standard Metropolitan Statistical Areas located in Texas.

MR - Korbelt

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It includes San Antonio in Bexar County.

Q What was that number, I'm sorry?

A BI-8.

Q And you have another one there that I laid there. I believe that is BI-10?

A Yes, this is another population by the U. S. Bureau of the Census, the population of 1960. It deals specifically with persons of Spanish surnames. It might be cited Final Report, PC(2)-1B.

Q It is my understanding that you used the data contained in the different studies in arriving at the preparation of the exhibits that are here in the courtroom?

A Yes, that data assisted us in part of the preparation of these exhibits. We used other data.

Q Now, I believe this particular exhibit has several overlays on it, doesn't it?

A Yes, sir, it does.

MR. IDAR: If you don't mind, I would like to go ahead -- I would like to have the witness step down, Your Honor, and have him go over these overlays one by one.

(REPORTER'S NOTE: Witness complies.)

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MR. IDAR: I would like to have the record reflect the fact that the basic map itself is identified as BI-2, and then the first overlay would be, or is identified as BI-2A. We have four overlays. They are identified by the same number with alphabetical designations at the end.

BI-2A.

A Yes. Now, we are referring specifically to BI-2A. This, again, is an inscription of those 27 or in this of these 28 contiguous census tracts located in the southwestern portion of Bexar County. This area is described as a Mexican-American barrio, and it is also described as the west side.

I might point out in the upper left-hand corner of each census tract is inscribed a number. That number is the census number on the 1970 census. The next figure is the median income by census tract, which was derived from the Texas study that we identified here.

I might point out, and you will notice that the census tracts do not follow precinct lines. That is unfortunate that there isn't better planning, but what we did is, we laid the census tracts on top of the map and laid it on by streets, and that is the way the census tracts

DE - Korbel

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are set out.

Q Did you arrive at certain conclusions on the basis of that data as reflected by that overlay?

A Yes, we arrived at several conclusions.

Q I wonder if maybe we could wait for the conclusions until we identify the next one?

Q All right, fine. This next overlay is identified for the record as BI-2B.

A Yes. This, again, inscribes this west side or barrier area of San Antonio. Now, reading through and also inscribes all census tracts lying -- all contiguous census tracts lying within the populated area of San Antonio. The first number, again, is the census tract number. The second number is the median income by the census tract from that survey. The third number is the population.

Now, that can be read through the overlay. You can read all these numbers through the overlay. It is easier to discuss with these two overlays together.

Q Now, I guess you want the next overlay?

A No, let's go---.

Q Well, we might as well explain the last one, and then you can get on to your---.

A O. K. This overlay is simply an overlay---

1 DE - Korbal

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2 Q Excuse me a minute. This last overlay is
3 identified as SI-2D?

4 A This next overlay is simply a description,
5 again, of the west side or barrio area. It is by 1960
6 census tracts, rather than 1970 census tracts. On that
7 we have -- let's see -- four numbers, I think. Yes, the
8 first number is the total population of the census tract,
9 of the barrio census tract. The second number is the black
10 population of the census tract. The third number is the
11 Mexican-American population native-born of the census
12 tract. The fourth number is the Mexican-American foreign-
13 born on the census tract. That is available for the 1960
14 census, but is as yet not available for the 1970 census.

15 Therefore, most of our data is going to have
16 to be based on the 1960 census.

17 MR. IDAR: If you will, take the seat
18 there, Mr. Korbal.

19
20 (REPORTER'S NOTE: Witness resumes
21 the witness stand.)

22
23 Q Based on this data you have compiled and
24 referred to, did you arrive at certain conclusions relating
25 to housing--?

DE - Korbelt

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A Yes, we did.

Q ---in these 27 census tract areas that is outlined in those exhibits?

A Yes, we did.

The conclusions are that this area contains 78.54 percent Mexican-American. It contains a black population computed at 3.93 percent. This study indicates that while the population of the 27 or 28 contiguous tracts -- in this case we are talking about the 27 tracts, because we are talking about the '60 census -- was 30.82 percent of the Bexar County population and that the said tracts contained 26.79 percent of the Bexar County housing units, 45.04 percent of the Bexar County deteriorated and dilapidated units.

That is, again, from the census study. 40.05 percent of the Bexar County housing units which have shared bathrooms with another tenant or have no bathrooms at all. 18.19 percent of the Bexar County housing units which were built between 1950 and 1960. 54.96 percent of the Bexar County housing units valued below \$5,000.00, and the housing has an average median value of \$6,462.96, as compared with the Bexar County-wide median value of \$9,300.00.

Q Did your study indicate anything relating to the median income of the families residing in that area?

DE - Korb

A Yes. Once again, while the population of the 27 tracts was 30.82 percent of the population, the said tracts contained 73.04 percent of the Bexar County families with median incomes under \$5,000.00; 2.18 percent of the Bexar County families with median incomes over \$25,000.00.

Q And what about the educational factor? Did the study reflect anything having to do with the number of years in school and so forth?

A Yes, the study indicated that while the population of the 27 tracts was 30.82 percent of the total population, the said tracts contained 65.43 percent of the Bexar County persons having never attended school and only 5.26 percent of the Bexar County college graduates.

Q What did it reflect as to the labor force in Bexar County?

A Yes. This area of 30.82 percent of the county population made up 29.55 percent of the Bexar County labor force. However, 46.33 percent of the total Bexar County unemployed work force lived within that barrier.

Q Did your study further reflect the total population of Bexar County?

A Yes, the total population of Bexar County under the 1960 census was 687,151.

Q What about the 1970 census?

DE - Korb

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A 830,460.

JUDGE GOLDBERG: What?

THE WITNESS: Bexar County, 830,460.

Q What about the black population? Do you have any total figure for the black population?

A In 1960 the black population of Bexar County was 45,314 or 6.59 percent of the county. In 1970 the black population of Bexar County was 56,622 or 6.82 percent.

Q We don't have any up-to-date figures on the Mexican-American population, have we?

A As yet, the Bureau of the Census has not printed information by Spanish surname.

Q Did you make any findings relating to the type of housing, for example, whether or not it had plumbing in the same 27 census tract area that we are talking about?

A Yes. Using the data which is available from the 1970 census, we found that this 28-tract area of the 1970 census was 23.78 percent of the total population. The said tracts contained 58.52 percent of the total dwelling units lacking some or all plumbing at an average contract rental of \$51.86, as opposed to \$86.00 for the county as a whole.

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The average home owner cost was \$8,807.14, as opposed to \$13,500.00 for the county as a whole. 47.8 percent of the county housing units valued at less than \$5,000.00 were located in that barrio area, and 80.67 percent of the county units valued at \$50,000.00 or more were located within that barrio area.

(No omission here.)

1 D. E. - Korb

2 Q Now, I believe this other exhibit over here,

3 BI-1--

4 A --Yes, sir.

5 Q --relates to a study that you and the people
6 working with you made of certain elections conducted in
7 Bexar County from 1880 to 1970?

8 A Yes, sir.

9 Q This was strictly elections dealing with
10 the House of Representative? Is that correct?

11 A Yes, sir. We restricted ourselves at the
12 present time to only the Texas State House of Represen-
13 tatives.

14 Q All right. Did you arrive at certain con-
15 clusions based on the study you made?

16 A Yes, sir. What we did, was we made a study
17 of the-- all persons who have run for election to the
18 Texas State House of Representatives from districts
19 contained within Bexar County or parts of Bexar County
20 from 1880 to 1970. We chose 1880 because we wanted to
21 get away from the reconstruction period which would
22 skew any sort of examples which might be drawn from the
23 data. What this chart represents, depends on this chart
24 represent, are the last seven elections to the Texas
25 State House of Representatives.

D. E. - Korb

Q For what period of time?

A That would be the years 1960, for two special elections held in 1961-- those were in November and December of 1961-- of the years 1962 through 1970. Those are seven elections, I believe.

Q Now, what were some of the findings that you made on this study? For example, did you find anything to do with the number of Republicans that might have run in 1970 and so forth?

A Yes. We found-- on the basis of that study-- let me find it in my file. We found that no Republican in the data which was available from the county offices, has ever been elected to the Texas State House of Representatives from Bexar County, or from any tract containing part of Bexar County.

Q Did you make any conclusions as to the number of Mexican-Americans that might have run or been elected?

A Yes. There have been five Mexican-Americans elected to the Texas State House of Representatives from 1880 from Bexar County or from tracts including parts of Bexar County. One of the representatives elected was in 1890-- excuse me-- 1900. The other, four Mexican-Americans have been elected in 1960,

1 D. E. -Korbel

2 and on.

3 Q Do you know how many Mexican-Americans
4 have stood for election?

5 A Our study is a little confusing because
6 back in the first part of century, and the last part of
7 the last part of the last century, it is difficult to
8 distinguish between Mexican-Americans of like surname.
9 But it appears to us that no more than twenty-seven
10 Mexican-Americans have stood for election to the Texas
11 State House of Representatives from Bexar County or
12 from tracts containing-- or from districts containing
13 parts of Bexar County.

14 JUDGE WOOD: You mean from 1880 to the
15 present?

16 A From 1880 to the present. That's right.

17 Q Would you step down now and give the Court
18 a little better idea of what these different pins
19 represent, bearing in mind the fact that they have
20 different colors and that some of them have a black head
21 or have been painted black at the top.

22 A Yes. The pins run from-- the pins
23 represent seven colors or seven elections. The blue
24 pins indicate 1970; the red, 1968; the yellow, 1966;
25 the green, 1964, the white, 1962; the silver with a black

1 D. E. - Korbel

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2 base represent 1961 November special election and the
3 plain silver represents December 1961's special election,
4 and the white pin with a black base represents the 1960
5 election. Now, the pins with black heads on them indicate
6 an election-- just the regular pin-- indicate simply a
7 standing or a running for election. Those indicate all
8 candidates in all primaries; Democrat and Republican.

9 Q As well as general election?

10 A As well as the general election. It indicates
11 all candidates for election. Excuse me. I might qualify
12 that. It indicates all candidates for election that
13 received five hundred or more votes. That way we could
14 exclude write-in votes for insignificant people.

15 Q All right. Calling your attention to the
16 area on the map outlined in orange or red there, can
17 you explain the few pins in that area there?

18 A I can't explain why there are a few pins
19 in the area but I can explain what the pins are.

20 Q Okay.

21 A This is an election-- I might start out
22 with the earliest election. This would be a 1960
23 election of Mr. Esquivel, I believe. This is a 19--
24 excuse me. I misstate that. The silver one indicates
25 a special election in 1961. The second special election,

1 D. E. - Korbel

2 the December special election when Esquivel was first
3 elected to the legislature. The white pin with the black
4 head indicates his victory in 1962.

5 JUDGE WOOD: Speak a little louder, please.

6 A Excuse me. The white pin with the black
7 head indicates a Mexican-American victory in 1962 and
8 the green pin indicates his loss in 1964. The yellow
9 pin is a man by the name of Porter, a Reverend Porter,
10 who is a Black Methodist minister, who lives at the
11 northern edge of this barrio area. The silver pin with
12 the black shoulders indicates a fellow by the name of
13 Ismael Garza who ran for election in 1961 and was--
14 excuse me-- the first special election in 1961, and he
15 was handily defeated. The silver pin with the black
16 shoulder and black head indicates a Mr. Kothmann--

17 Q --Kothmann.

18 A --who was elected to the legislature in
19 1961 in the first special election; he being an Anglo.
20 He was living in the middle of the barrio, but he is an
21 Anglo. It is my understanding he is no longer living
22 there.

1 D. E. - Korbal

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2 Q All right. Now many pins all told, are
3 there within the orange-- the area in orange there?

4 A There are six pins within the orange area.
5 They represent four persons.

6 Q That ran in this area for the ten year
7 period from 1960 to 1970?

8 A That is what our study indicated, yes, sir.

9 Q And only one was actually elected?

10 A Only one was actually elected. Well, two
11 were Mexican-Americans. One was a Black and one was an
12 Anglo.

13 Q As to the rest of the city, would the same
14 thing represent-- would the pins in the rest of the
15 city represent basically the same thing? You have
16 indicated as to the area in orange. That is the people
17 that have run in different areas by the color, and those
18 that were elected.

19 A Yes. The legend here indicates what the
20 pins mean.

21 Q And the map would illustrate, by way of
22 general indication, that the overwhelming number of
23 those that have run, as well as have been elected, have
24 been from the northern portion of the city? Is that
25 correct?

1 D. E. - Korbai

2 A Yes. The map indicates that especially
3 in the last few years, almost all of the elected
4 officials come from the north and from the northwest.
5 It is almost a progressive sunburst pattern.

6 Q One final question as to this map here.
7 What about the black area? How many pins do you see in
8 the area in the black?

9 A Yes. There are two pins in the area in
10 black. One is a blue pin indicating a 1970 election
11 and one is a yellow pin. The blue pin is actually in
12 an almost fashionable of town. It is not really a Black
13 area. When we talk about a Black area, we are only
14 talking about thirty or twenty-eight per cent in this
15 area.

16 Q All right.

17 A It is really not a ghetto area, I suppose.

18 Q Did you arrive at a certain overall
19 conclusion as to voting patterns within the orange area
20 as a result of this study?

21 A Yes, I did.

22 Q And what were your conclusions?

23 A Yes. The conclusions that we arrived at
24 and that I arrived at by the study is that, one, Mexican-
25 Americans are much more likely to vote for a Mexican-

1 D. E. - Korbhel

2 American than for an Anglo. Do you want me to illustrate
3 that?

4 Q If you are able to, yes.

5 A Yes. I can illustrate that. In Place 7
6 in the 19-- I don't seem to have my notes on that.
7 The totals which we ran on the barrio precincts indicate
8 that Mexican-Americans overwhelmingly vote for Mexican-
9 Americans. For example, in 1971-- excuse me-- 1970, in
10 Place 7, Pinon loses to a West and a Simmons. The vote
11 there is 30,786, 9,153 for West and three thousand seven
12 hundred and-- excuse me-- 37,607 for Simmons. Yet in
13 the barrio area, Pinon carries the total area by 11,646
14 to 558 for West to 1,603 for Pinon.

15 Q All right.

16 A I could go on. Place Number 8 in the 1970
17 primary election again, Jose Chapa loses to Nelson Wolfe,
18 32,086 to 41,373, yet he carried the barrio area, 10,907
19 to 2,635 in the 1968 election. Should I go on?

20 Q No. I think that is enough to illustrate
21 the point. What other conclusions did you arrive at,
22 based on that study?

23 A The second conclusion we arrived at was
24 that when Mexican-Americans run against Mexican-Americans,
25 the vote tends to split between them.

1 D. E. - Korbøl

2 Q Any other conclusions?

3 A You want me to illustrate that by a specific
4 reference?

5 JUDGE WOOD: That is not necessary.

6 A The third conclusion was that where no
7 Mexican-American in the race, the Mexican-Americans tend
8 to vote for the most popular Democratic candidate, or
9 usually the winner.

10 Q Did you make any findings as to the
11 Republican Party and the voting pattern in that area as
12 it relates to it?

13 A Well, we were restricted with respect to
14 the Republican Party because they only had a-- they have
15 only had one primary. But in the 1968 primary, a
16 Republican by the name of Gonzales, who, by the way, is
17 a Spanish surname, received thirty-four votes from the
18 entire area. Harris, who was another Republican,
19 received thirty-two votes for the entire area and
20 Chamberlain, another Republican, received thirty-three
21 votes. I might contrast that with the Democratic
22 primary. That same Democratic primary where Place Number
23 1 received 11,780-- excuse me-- 11,780 votes were cast
24 for three candidates. In other words, around 10,000 to 1.

25 Q Now, going on to another portion of your

1 D. E. - Korbel

2 work, Mr. Korbel, did you do any work in relation to the
3 cost of running a campaign in Bexar County?

4 A Yes, I did.

5 Q What is it you did-- you and the people
6 working with you?

7 A Yes. We conducted a survey or a study of
8 all expense data available. Now that is only for one
9 election. That would be the 1970 election. Texas law,
10 I guess, allows the county officials to throw away the
11 election reports after two years. So we were restricted
12 to the 1970 election expenses. My findings on that were
13 as follows: The average winner in the 1970 election--
14 now this is excluding three unopposed candidates, because
15 they were not required to file in the Bexar County offices.
16 The average winner of a contested election spent \$8,618.33
17 while the average loser spent \$2,822.78.

1 D. K. - Korbal

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2 Questions by Mr. Idar:

3
4 Q Do you have any illustrations as to
5 specific races there between the--

6 A Before I go on, I might point out that
7 of the seven winners three were incumbents. And, this,
8 I suppose, was because they were less known. So, this
9 figure-- Yes, on the various races-- Mexican-Americans
10 were found in four races. Robert Vale was unopposed, so
11 we have no data on that race for Place Number 2. For
12 Place Number 7, Fernando Pena, was opposed to Wayland
13 Simmons and a Mr. West. Pena received-- Pena spent
14 \$2,241.00 while Simmons spent \$7,364.35, West spent
15 \$2,560.00. In this case the Mexican-American candidate
16 spent less than either of the Anglo candidates. For
17 Place Number 8 Jose Chappa spent \$5,462.00 as opposed
18 to Nelson Wolfe's \$10,054.50. For Place Number 6, Paul
19 Silber, spent \$16,620.00 as opposed to the Mexican-
20 American, Frank Mata, \$1,675.00.

21 Q Okay--

22 A With respect to gifts received by candidates
23 in the 1970 election, again, for four places. Vale was
24 unopposed so we have no data for Place Number 7. Pena
25 received \$1,066.00; Simmons received \$6,958.28 and West

1 D. E. - Korbøl

2 received four thousand-- excuse me-- West received \$447.50.
3 For Place Number 8, Chapa, received \$2,300.00, Wolfe
4 received \$5,235.00.

5 Q All right, Mr. Korbøl. Let me ask you one
6 final question. Was there a portion of your study--
7 relating to the voting pattern now-- I am going to refer
8 to the voting pattern of the area in green-- that is
9 presently under way.

10 A Yes. Because of the press of time, you
11 know, we haven't finished, well, what we feel is another
12 study which we feel would be important to the Court, and
13 that is a study of the voting patterns of a like area--
14 or a like area to this barrio area-- which would con-
15 tain about seventy or eighty per cent Anglos. I ran a
16 preliminary study to see what that would show-- what
17 that study would show.

18 Q How many census tracts were involved, or
19 precincts, on that preliminary study?

20 A I don't remember. I think I ran nine.
21 I don't remember how many census tracts; I suppose it
22 would be two or three in nine precincts.

23 Q Nine precincts.

24 A It shows the Anglos' tendency to vote
25 overwhelmingly against Mexican-American surname candidates

1 D. E. - Korbel

2 except in the general election where they tended to vote
3 for the Democratic nominee, whoever he might be-- although
4 in a somewhat smaller proportion than he voted for Anglo
5 candidates.

6 Q Do you have any idea how much more time it
7 would take to complete this portion of your study?

8 A I came up here yesterday, the clerks were
9 working on it yesterday morning, I talked to them today
10 and they were about half finished with it. I would
11 think that by the end of the week we should be able to
12 have a fairly substantial study on that finished, and
13 we could have it available in memorandum form by
14 probably Tuesday or Wednesday for sure.

15 MR. IDAR: In the light of that testimony,
16 Your Honor, I would like to, if there is no
17 objection, request leave of this Court to file
18 a post-trial memorandum that would incorporate
19 the findings of this last portion of our effort
20 here that Mr. Korbel has just testified to. We
21 would, of course, make it available to counsel
22 on the other side and give them an opportunity
23 to respond to it. We feel that we may be able
24 to have this information ready by possibly
25 Tuesday of next week. If we don't then, of course,

1 D. E. - Korbai

2 we will be precluded from filing.

3 JUDGE JUSTICE: Is there an objection?

4 MR. CUNRY: Well, Your Honor, first of
5 all, we would like to see it. If it is prepared
6 and we don't have the opportunity to cross
7 examine, there is not much we can do about
8 whether or not we can contest it. If there
9 is some way we could work with the gentleman
10 and talk with him informally and satisfy our-
11 selves, we would be more than happy to cooperate.

12 JUDGE GOLDBERG: Why don't you attempt to
13 have a conference with him and see if you can
14 agree on what technique he is using and point
15 out to us tomorrow or the next day as to
16 whether you can?

17 MR. CUNRY: We will do it this evening,
18 Your Honor.

19 MR. IDAR: Pass the witness, Your Honor.

20 JUDGE JUSTICE: Are there any other
21 Plaintiffs' attorneys who wish to cross
22 examine?
23
24
25

1 C. E. - Korbelt

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2 CROSS EXAMINATION

3 Questions by Mr. Curry:

4
5 Q In connection with your studies, do I
6 understand that these maps take in all of Bexar County?

7 A No, these maps take in only the contiguous--
8 the contiguous, heavily populated census tracts located
9 within Bexar County; that is to say they take in the San
10 Antonio area.

11 Q And excludes the rest of the county?

12 A Yes. There wasn't any map big enough
13 to give this much detail and include the rest of the
14 county.

15 Q Did you make any attempt to determine the
16 area of the senatorial districts on these maps?

17 A No. My study, because of the time that
18 we had, was specifically limited to the State Legislature
19 from 1880 to 1970.

20 Q And, nothing to do with the Senate?

21 A No. Actually, we went from 1860 to 1970,
22 but that data would--

23 Q Did you make some additional findings
24 regarding the Republicans? For instance, I will ask
25 you how many Republicans ran for the House of Representatives

1 C. E. - Korb

2 in 1970?

3 A One Republican ran for the House of
4 Representatives in 1970.

5 Q And, how many Democrats were unopposed?

6 A Seven Democrats were opposed in the
7 primaries and nine Democrats were unopposed in the general
8 election.

9 Q What was the result of the Republican
10 election?

11 A The Republican received 29,240 votes; the
12 Democrat who he opposed received 88,525 votes.

13 Q How many Republicans ran for the House
14 of Representatives in 1968 from Bexar County?

15 A Five Republicans ran for the House of
16 Representatives in 1968; five Democrats were unopposed.

17 Q All right. Did the Republicans win in
18 1968?

19 A No. No Republican has ever won from
20 Bexar County as far as we could see.

21 Q As a matter of fact, they normally lose
22 at least-- at least if I look at your figures you have
23 provided me-- they lose a ratio of about three to two.

24 A It runs from three to one to three to two;
25 that is what it appears to me.

1 C. E. - Korbelt

2 Q And, in 1966 how many Republicans ran for
3 office from Bexar County?

4 A Only three Republicans ran for the House
5 of Representatives in Bexar County.

6 Q That is out of ten places?

7 A Out of ten places, that is right. However,
8 ten conservatives ran that year.

9 Q In 1964 how many Republicans ran for the
10 seven places in Bexar County?

11 A Seven Republicans ran for the seven places
12 in Bexar County in 1964.

13 Q Did they win any of those elections?

14 A No. None of the elections were won. No
15 Republican has ever been elected to the legislature in
16 Bexar County.

17 Q What is the largest vote received by a
18 Republican in a primary election in Bexar County?

19 A It is 5,016 votes. However, there has
20 only been one primary had by the Republicans within my
21 study.

22 Q I believe you testified that no Republican
23 has ever been elected to the Texas House of Representatives
24 from San Antonio-- from Bexar County.

25 A My study indicates no Republican has ever

1 C. E. - Korbel

2 been elected.

3 JUDGE JUSTICE: You are speaking of the
4 House of Representatives only?

5 MR. CURRY: Yes, sir.

6 A That is what I am speaking about.

7 MR. CURRY: We have no further questions,
8 Your Honor.

9 JUDGE JUSTICE: Is there any redirect?

10 MR. IDAR: No, sir, Your Honor.

11 JUDGE JUSTICE: In view of the progress
12 that has been made it has been decided by the
13 Court that there will not be a night session
14 tomorrow night. However, in the event Thursday
15 that it becomes necessary we will go into the
16 night.

17 JUDGE GOLDBERG: To finish.

18 JUDGE WOOD: We will finish Thursday night.

19 JUDGE GOLDBERG: Attempt to finish.

20 JUDGE JUSTICE: We will commence proceedings
21 tomorrow morning at 9:00 o'clock. The Court is
22 adjourned.

ROY BARRERA,

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a witness called on behalf of the Defendants, having first been duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATIONBY MR. McDANIEL:

Q Would you state your name, please?

A Roy Barrera.

Q Mr. Barrera, where are you from, sir?

A San Antonio, Texas.

Q And would you tell us where you were raised,

Mr. Barrera?

A In San Antonio, Texas.

Q Mr. Barrera, how old are you?

A Forty-five -- will be in a few days.

Q And what business or profession are you engaged in?

A I am a licensed practicing attorney in Bexar County.

Q How long have you been practicing law in Bexar County?

DE - Barrera

55x

A Since 1951.

Q In what part of Bexar County were you raised?

A On the west side of San Antonio.

Q Did you go to school on the west side of
San Antonio?

A I did.

Q Do you still live on the west side of San
Antonio?

A I do not.

Q Where do you live in San Antonio?

A In the northwestern portion of the county,
just recently taken into the city limits. I had been
living in the county, as such, for about ten years.

Q Mr. Barrera, is there a general tendency of
Mexican-Americans who better their economic station in life
to move out of the west side into better residential areas?

A I would say it is, yes, sir.

Q Have you been active in the past in politics
in Bexar County?

A I have.

Q Would you tell the Court briefly some of
your political activities?

A Well, it began in approximately 1949, '50,
'51. I became involved in the School Board elections

DE - Barrera

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initially as a concerned representation for the western section of the city when I was at St. Mary's University through Elutario Escobar, who headed a School Improvement League, the efforts being made to better the lot of the schools on the west side, increase the size of the schools, the size of the play areas, playground equipment, to tear down older schools and to replace them with new.

It continued after I received my law degree and went into the District Attorney's Office under the late Austin Anderson in campaigns involving the District Attorney himself personally and in legislative races supported by the District Attorney, who, after his death was replaced by Hubert Green.

I took part in and continued to take part in those elections. I took part in senatorial races going back to Ossie Lattimer when he was a State Senator and proceeding again to the legislative races, various and other sundry local and county races and sheriff's races, Presidential elections, Governors' elections that have taken place at the state level.

Q As a matter of fact, you have been on the School Board, have you not, of the Edgewood School District, which was involved in a rather landmark case here recently?

A Yes. I served on the School Board of the

1 DE - Barrera

55a

2 Edgewood School District from 1953 through 1959. I served
3 as President of the Board for about four years, the latter
4 four years.

5 Q And have you held political office yourself?

6 A I have, as an Assistant District Attorney,
7 not an elective post, and as Secretary of State by appoint-
8 ment of Governor Connally.

9 Q Mr. Barrera, would you tell the Court,
10 please, sort of a listing of people of Mexican-American
11 ancestry who hold political office in San Antonio and Bexar
12 County at this time, as you can recollect?

13 A Well, we have people on the various School
14 Boards, the San Antonio Independent School District School
15 Board. The President of that School Board is an elective
16 post, a Mr. Richard Teniente.

17 Mr. Ralph Cardenas, I believe, is still on
18 the Board. He's been on the Board for about 12 years by
19 election.

20 We have the two main principal downtown
21 Justices of the Peace in Precinct 1, Places 1 and 2. One
22 is the Honorable James Gutierrez and the Honorable Mike
23 Hernandez, both elected to posts by election contests,
24 the last one being Mr. Mike Hernandez, who ran against
25 the incumbent, Charles Bond, who had been a former

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2 Sheriff's Office candidate and quite well known.

3 Aside from that, we have the Honorable
4 H. F. Garcia sitting as the County Judge, County Court-at-
5 Law No. 2, who has held that position for approximately
6 six years or so. He was initially appointed, thereafter
7 stood for election, has not had any opposition, Republican
8 or Democratic, from any source.

9 We have the Honorable Judge, District Judge
10 John Benavides of the 175th District Court, I believe. It
11 is primarily a Criminal District Court by appointment of
12 Governor Smith. He has stood for election without contest.

13 We have the Honorable Carlos Cadena, who
14 is Associate Justice of the 4th Court of Civil Appeals,
15 who was appointed by Governor Connally and has stood for
16 election without opposition.

17 We have had for many years Constable Garcia
18 -- I forget his last name (sic), Bob Garcia, over in the
19 northeast section of Bexar County. He's held that post
20 for 20 years.

21 I don't recall any other elective posts,
22 other than, of course, the Highwood School District where
23 primarily -- in fact, the entire Board is Mexican-American.

24 Q What about the obvious ones you are over-
25 looking? What about your State Senators?

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A Well, of course, yes, at the state level we have the State Senator Joe Bernal, who runs in, of course, District 26, and we have the former legislators, Rudy Esquivel, who was defeated by Senator Joe Bernal for the Legislature.

Initially, we have had Johnnie Alines.

We had Robert Vale, who is still occupying that post.

Q Mr. Vale has what, I think, would normally be denominated an Anglo name. As I understand it, his father is Anglo and his mother is Mexican-American. Is that correct?

A Well, my understanding, of course, is that the name is not really Vale, although it is used that way for purposes of accommodation, but it is rather Vale' -- V-a-l-e -- and, of course, we have got our County Commissioner Albert Pena, who has served in that position for many years out of County Commissioners Precinct No. 1.

Q That includes the west side area?

A A portion of the west side. In fact, I dare say that it is just about evenly divided between west side and south side. He's got some south side precincts there that are composed of a large number of Anglo people.

Aside from that, in our city elections, of

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2 course, we have got -- we have had councilmen sitting on
3 the City Council that have been of Mexican extraction,
4 Dr. -- first of all, at its inception Henry B. Gonzales,
5 who is now our present Congressman, who is, of course, from
6 San Antonio and Bexar County.

7 We have had Dr. San Martin. Of late, we
8 have had Pete Torres, who was recently defeated, but who
9 won in his own right, I believe, at least two terms.

10 We had Mr. George de la Garza, who left that
11 post of his own volition due to a business transaction.

12 We have had Mr. Jose Olivarez, who also was
13 elected by contest and left it voluntarily of his own
14 volition due to press of business.

15 Presently we have on the Council the Honor-
16 able Gilbert Garza, Mr. Leo Mendoza, Mr. Trevino -- I don't
17 recall who else.

18 (No omission here.)
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2 Q At the present time, realizing
3 this is a leading question, the City Council of San
4 Antonio is made up, is it not, of three Mexican-Americans,
5 one Negro and five Anglos, one of whom is a woman, is that
6 correct?

7 A Correct.

8 Q Mr. Barrera, turning for a moment
9 to the social and racial problems of San Antonio and Bexar
10 County, generally has there been progress made in this
11 area over the last 10 years or 20 years?

12 A Decidedly.

13 Q Let me get down, then, to the issue
14 which I deem to be the one of most import to the Court in
15 this case: does multi-member districting of the Legis-
16 lative districts in Bexar County prevent the Mexican-
17 American population in Bexar County from having a full
18 and effective participation in the political processes
19 in Bexar County?

20 A A full participation, yes. An
21 effective participation, I would say, would depend entirely
22 on the make-up of the candidates-elect.

23 Q Now, the percent or size, if you
24 would prefer to say it that way, of the Mexican-American
25 community in Bexar County as compared with, say, the

1 Direct Examination - Barrera

2 Anglo community?

3 A I would say that they are
4 numerically just about even, possibly exceeded a little,
5 by the Anglo. But, I believe, as I last recall, havin,
6 looked at the figures, that the Mexican-American or
7 Spanish-speaking population in Bexar County totals any-
8 where between 45 to 48 percent.

9 Q Insofar as participation in the
10 political process in Bexar County is concerned, has the
11 problem been more oriented to a difficulty in getting the
12 people to participate or toward the particular system of
13 representation used?

14 A I believe that one of our major
15 problems in San Antonio, as in other communities, has been
16 a lack of participation by our people. However, of course,
17 this has been aided and abetted, to a great extent, and
18 contributed to by other factors which I would certainly
19 cite; among them being discriminatory practices that have
20 been heretofore inherent in our election processes, yes.

21 Q Yes. Are those factors presently
22 being removed?

23 A I would say that to a great extent,
24 that they have been removed and are being removed.

25 Q Do you have any idea of what the

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2 percentage -- of what percentage of the Mexican-American
3 population in San Antonio is registered and does vote?

4 A I don't have the figures and I
5 would just be estimating on past experience, but I would
6 dare say that of the number of eligible voters that we
7 have in Bexar County of Spanish-speaking, or Mexican-
8 American extraction or Mexican-American, that I would say
9 that about 30 percent of these might be registered.

10 Q Now, from my discussions with you,
11 I take it one of your disagreements with the use of multi-
12 member districting is the winner take all nature of that
13 type of representation?

14 A Well, as I discussed with you
15 yesterday, Mr. McDaniel, on a multi -- a multi-member
16 district or a situation where you have members of that
17 particular district running at large, you do have a
18 situation where there are some people, whether it is
19 of ideological difference or what, and ethnic difference,
20 or a religious difference who are not going to have their
21 viewpoint represented. By that, I mean simply this, as
22 an example, supposing that you had a community consisting
23 of say, four-fifths Protestants and one-fifth Catholic.
24 Certainly, it would be obvious to me, to anyone interested
25 in the outcome of an election, where this possibility might

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be an issue, that the Protestants would have all of the representatives to be elected in that particular district as against none for the Catholics -- if such an issue were to arise. Consequently, if you have a population that is succeeded by one ethnic group, as against another, and if the differences between these two groups are brought to the front and the election is going to be determined or decided along the ethnic lines, then certainly the ethnic minority is not going to have its representatives elected.

It just goes without saying, as normal elections go, that does not happen.

Q Let me ask you a question at this point, realizing that there is a certain element of ethnicity -- or ethnicity, I should say -- connected with any political race in which candidates come from different ethnic background, has the tendency in San Antonio over the years -- and by "years", I mean the recent years at least -- been toward a cohesion of the society to determine things on the merits or has it been toward a device along racial lines?

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2 A I have found this, whenever a
3 candidate seeks to base his candidacy by an appeal to
4 ethnic background, whether it is a majority group or a
5 minority group, that the minority candidate is going to
6 necessarily find that he is going to be short of votes when
7 it is all over. If the appeal is based to qualification,
8 to capability, to a determination to represent the people
9 of the community as a whole, in whatever post a man seeks
10 to be elected to, that this is lessened quite a bit. And,
11 we have, of course, county-wide elections now of minority
12 group representatives where it is not an issue and has
13 not come to the fore and they have been elected.

14 Q And, speaking of practical politics,
15 is it to the point in San Antonio where the ethnic groups
16 are taken into consideration in political plans by every-
17 one?

18 A Yes, I think that is more so now than
19 it has been in the past. As a matter of necessity, we
20 have found that oftentimes the majority group, or the
21 establishment, or the powers that be, have seen fit, in
22 the interest of harmony and in the interest of keeping
23 this thing from developing along racial lines or appealing
24 to ethnic background, they have seen fit to sit and to
25 confer with and compromise with the various leaders of

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2 the ethnic sections of the City. And, for example, have
3 formed or comprised a ticket made up of so many Anglos,
4 so many Mexican-Americans and so many Negroes in the
5 interest again of appealing to, as a group, all sections
6 of the City.

7 Q Now, when you say "we", there at
8 the preface of that question --

9 A Yes.

10 Q -- I take it "we" was referring to
11 not "we" as Mexicans, but "we" as citizens of Bexar County?

12 A That is correct.

13 Q All right. In Bexar County, in
14 numbers at least, is it true to say that there is no
15 majority ethnic group?

16 A As individual ethnic groups, yes, I
17 would say that your Anglos certainly outnumber the Mexican-
18 Americans. If you combine the Mexican-American and the
19 Blacks, then possibly they might be outnumbered by the
20 Mexican and the Black.

21 Q As a matter of fact, in our discussion
22 though I questioned the accuracy of your figures about the
23 Blacks in San Antonio --

24 A Yes.

25 Q -- my thinking was it was closer

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2 to 10 and you to 20 percent. As a rule of thumb, you
3 stated that typically considerations, in your mind, at
4 least, in the past, had been 40-40-20?

5 A Yes. I have carried it along in
6 that fashion, one, for practicality and the other of not
7 worrying too much about the number, but more so about the
8 effort that is to be extended by any given election. But,
9 I have generally accepted in my mind a 40-40-20 division
10 as being one we are going to work with, whereas if -- and
11 as we have had on occasion -- we have had a candidate
12 run county-wide, we have, oh, I would say, as a Mexican-
13 American, have had an occasion to combine the effort on
14 the west side and the east side as against the candidate
15 proposed by the Anglo.

16 Q The east side, referring to --

17 A The east side, referring to the
18 Black, yes, sir. We have had occasion to form that combina-
19 tion. We have had occasion to form a combination of
20 candidates agreed upon by all parties to where we have
21 had occasion to form a ticket that was acceptable and
22 salable to all parts of the County for all parts of the
23 City, by, again, having the Anglo majority agree to the
24 acceptance of Mexican-American representation on the
25 ticket, to Negro or Black representation on the ticket

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education. To that extent, and for that purpose, I have continued to remain involved and interested in the school board elections out there, teacher associations --

I have had occasion to go to the Edgewood District and to speak to parents, to students and teachers whenever the occasion arises. During my political efforts, I have had occasion to go down there to continue to become acquainted with the problems that prevail out there. Only yesterday I received a letter from a migrant worker, manager, who was proposing that I take up my candidacy against Senator Joe Bernal, who is a friend of mine -- without regard to whether I will or will not. But, I have remained in touch and I am aware of the problems that are out there and I do make an effort, time permitting, to remain involved and continue to be involved.

Q Is this awareness and this closeness typical of the Mexican-American in San Antonio who has managed to achieve economic means enough to move out of the west side?

A I would say that to a great extent, it is. It has got to be, because one thing that differentiates, in my opinion, a Mexican-American from possibly other nationalities, is that once you are a Mexican-American, you will always be one. You can't

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in order that one cohesive cooperative effort might be made in all portions of the City or County to bring about the success of the election regarding the particular candidate proposed. Where we go on the west side, for example, and propose that the Anglo candidates who may be little known, or little cared for, necessarily in some sections on the west side, that they be voted for in view of the fact that on the other hand we have an agreement that on the north side, the Mexican-American candidates will be equally proposed, and made salable to the voters there, as also affects the Black voters and Black candidates we have had occasion to have. So, we have formed these combinations and they have been successful.

Q Mr. Barrera, do you feel that you still have close contact with, and a feeling for, the predominantly Mexican-American lower economic status group on the west side?

A I would say that the better part of my family members, cousins, uncles, relatives, still live on the west side. I speak Spanish, never have ceased to. I served on the Edgewood Board for 7 years, of course, without remuneration, because I feel primarily that our effort to better our situation in San Antonio and in other areas is going to have to come by way of an

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2 get away from the customs, from the food, from the
3 language, from the dress, from the music. Senator Joe
4 Bernal lives on the north side. He, of course, is
5 elected in the 26th District, which is primarily of
6 Mexican-American. So, the fact that you remove yourself
7 from a particular area doesn't necessarily make you any-
8 thing other than what you have been.

9 Q The question I was driving at there,
10 is it necessary for the Mexican-American, or for that
11 matter, anyone else who is sympathetic to the problems
12 of the west side of San Antonio, to live in that area,
13 in order to effectively be concerned with it and represent
14 the interests of the people there?

15 A No, sir. That is advanced some-
16 times by those people who seek to gain some advantage
17 from it, politically. And, of course, it is a proper
18 approach -- to say "Well, if he doesn't live here, how
19 can he care about us?" But, that is not necessarily true.
20 There are many of us who are politically motivated and
21 inspired and that continue to remain involved and interested.
22 There are others who are not politically connected;
23 doctors, lawyers, Indian chiefs, who have nothing to do
24 with the election process other than to possibly go vote.
25 They remove themselves from an area, for the sake of

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2 finding a better home in some other location, better
3 land values, or whatever, who may never go back to the
4 west side -- but not because they don't care for it. It
5 is just because during the course of their lifetime, they
6 don't have occasion to remain involved to that extent.

7 Q Now, there are and there have been
8 in the past, have there not, Anglo candidates and elected
9 officials in San Antonio, who have had much of their
10 voting base on the west side?

11 A No question about it, yes, sir.

12 MR. McDaniel: I believe that is
13 all I will ask at this time, Judge.
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CROSS EXAMINATION

Questions by Mr. Idar:

MR. IDAR: I am going to use my copy if there is no objection. It is the same publication.

MR. CURRY: All right.

Q Mr. Barrera, you say you served in the Edgewood School District Board of Trustees?

A Yes, sir.

Q Is it true that is almost a one hundred per cent Mexican-American school district?

A Yes, sir.

Q Now, you mentioned that Mr. Richard Teniete is the president of the San Antonio Independent School District Board of Trustees?

A Yes, sir.

Q And did you also indicate that Mr. Ralph Cardenas and-- is it Cardenas you mentioned?

A Ralph Cardenas, yes, sir.

Q He is on the Board of Trustees?

A If he is not now it may be because he just recently retired, but I do know that he served on that board for at least ten, twelve or possibly even fifteen

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2 years.

3 Q Do you know how many people constitute the
4 Board of Trustees of that district?

5 A I don't have it in mind right now, but I
6 believe it is nine.

7 Q And of these, how many are Mexican-Americans?

8 A I don't have that in mind.

9 Q Can you recall anybody other than Mr.
10 Teniete?

11 A Yes, sir. Mr. Garcia-- Gus Garcia, during
12 his lifetime.

13 Q Now, Gus Garcia served back in '48?

14 A Who serves now?

15 Q Yes.

16 A I don't recall. I believe there are one
17 or two other members, but I couldn't--

18 Q --Would it be a fair assumption that there
19 is not more than three out of the nine?

20 A I would say that is a fair assumption, yes,
21 sir.

22 Q Would you agree with me that the San
23 Antonio Independent School District-- I have a publication
24 published by the U.S. Civil Rights Commission as hand,
25 and I am going to ask a question--

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2 A By whom?

3 Q The U. S. Civil Rights Commission.

4 A All right.

5 Q Well, you are welcome to look at this.

6 A I accept your statement. I just didn't
7 catch the name.

8 Q Well, we have an extra copy so you can
9 refer to that.

10 A All right.

11 Q If you will look at that chart up at the
12 top of page 25, this reflects that in the San Antonio
13 Independent School District, the total enrollment is
14 79,353 students. Of those, 21,310 are Anglo-American
15 and the Anglo-American constitutes 26.9 per cent of the
16 enrollment. The Mexican-Americans, in round numbers,
17 are 46,188, and they constitute 58.2 per cent of the
18 enrollment in that district. The other minorities which
19 I would presume would include your Black, Indians and
20 what have you-- principally the Black-- you would agree
21 with me that apart from the Mexican-American and the
22 Black, we don't have any other significant racial or
23 ethnic minorities in San Antonio that is recognized?
24 Maybe a few Japanese or Chinese?

25 A No, sir, I would not. We have a large

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2 Lebanese population in San Antonio. We have a large
3 Italian population in San Antonio. We have a substantial
4 Jewish community in San Antonio.

5 Q Well, assuming we have what you are
6 talking about, we do not have them concentrated in
7 certain areas like you do the Mexican-Americans or the
8 Black? In other words, haven't they been very well
9 assimilated into the overall population of the city?

10 A I would say yes.

11 Q Anyway, continuing with this, the other
12 minorities on this chart here, in round numbers, 11,855,
13 with the per cent of the district enrollment being 14.9
14 per cent. Now, that is student enrollment and actually
15 we all realize that as a rule, student enrollment may be
16 generally somewhat higher than the round numbers when it
17 comes to population-- adult, that is. But would it be--
18 would it be fair to assume that even as to the adult popula-
19 tion, the San Antonio Independent School District, the
20 geographical area that it covers, is predominantly
21 minority, combining the Mexican-American and the Black?

22 A I don't know whether that would be a
23 fair assumption or not. It well may be, but I am not
24 aware of those figures.

25 Q Okay. Referring to page 24 from this

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2 publication-- incidentally, do you have any quarrel with
3 the figures that the commission has come out with?

4 A I am not aware of the figures at all.

5 Q I mean the ones we have just cited.

6 A Well, those that you have called to my
7 attention, I don't necessarily quarrel with, no, sir.

8 Q All right. Over on page 24, about the
9 middle of the first full paragraph on the left-hand
10 corner there you will find the following language:

11 "Approximately 82,000 Mexican-Americans students,
12 or better than ninety per cent of the Mexican-American
13 enrollment, are in five predominantly Mexican-American
14 school districts; Edgewood, Harlandale, San Antonio,
15 South San Antonio and Southside. Sixty per cent of the
16 Anglo public school pupils in the area are in the eight
17 predominantly Anglo districts which surround the city.
18 Six of these districts have enrollments which are more
19 than eighty per cent Anglo."

20 From your knowledge of the city, long-time
21 residence there, do you have any reason to question this
22 conclusion that has been arrived at by the Civil Rights
23 Commission?

24 A No, sir.

25 Q You mentioned a Mr. Ralph Cardenas?

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2 A Yes, sir.

3 Q I don't recall-- he is one of the people
4 you mentioned as on the Board of the San Antonio Inde-
5 pendent School District?

6 A He is now or was until just recently.

7 Q All right. Now, you mentioned, I believe,
8 Judge Benavides, who was appointed by Governor Smith.

9 A Yes, sir.

10 Q And I believe you said he has since then
11 stood and been re-elected.

12 A Yes, sir. Without contest.

13 Q Would you agree with me that generally
14 an incumbent has a tremendous advantage when he announces
15 for public office, as a general rule?

16 A Yes. I would say generally that is correct.
17 Particularly among the judges.

18 Q From your knowledge of San Antonio, do
19 you think that Judge Benavides would have been elected
20 to that office, assuming he had not initially been
21 appointed for an unexpired term by Governor Connally?

22 A I have no reason to believe that he would
23 not have been, no, sir.

24 Q Are you acquainted with the fact that
25 Matt Garcia ran for district judge twice in San Antonio

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2 and for Bexar County and was defeated twice?

3 A Yes, sir. But I am acquainted also with
4 other factors that contributed to his defeat, sir,
5 aside from the racial or ethnic balance that may exist
6 there, yes, sir.

7 Q You are not alluding to the fact that
8 Mr. Garcia may have conducted an ethnic type campaign?

9 A No, sir. I say there were other factors
10 that contributed to his defeat both times, other than
11 the ethnic majorities or minorities.

12 Q Judge Cadena also was initially appointed
13 to the Fourth Court of Civil Appeals by Governor
14 Comanally?

15 A Yes, sir.

16 Q And has since run or stood for election
17 and been elected?

18 A Without contest, yes, sir.

19 Q There again, as an incumbent?

20 A Yes, sir.

21 Q I believe you stated that Senator Joe
22 Bernal's district is predominantly Mexican-American.

23 A I would so, yes, sir.

24 Q You made a reference in your testimony
25 to the powers that be in San Antonio?

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2 A Yes, sir.

3 Q What do you mean by that?

4 A The people who are in a position financially,
5 politically, to make decisions and to influence other
6 people around them.

7 Q Could you categorize these people as to
8 economic lines?

9 A Well, I don't know necessarily their
10 economic lines, other than substantially in any election,
11 in order to influence it there must be money or you
12 must have access to money.

13 Q And those are the type of people we are
14 talking about?

15 A Well, not necessarily just that type.
16 I say politically influential. People who employ other
17 people, people who become involved civically in city-
18 wide efforts, people who become acquainted with the
19 community who wheel influence, whether it be political
20 or civic or social. Religious influence is wheeled in
21 San Antonio also quite effectively. It certainly is a
22 part of it.

23 Q Mr. Barrera, I am going to refer to what
24 has been introduced in evidence here as Plaintiffs'
25 BI-1, and you will notice an area there that is outlined

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2 in orange which has been identified as the west side of
3 San Antonio. I realize you haven't had an opportunity
4 to look at the streets or the geographical boundaries
5 closely, but would you agree generally that that is your
6 so-called west side or Mexican-American area of the city?

7 A Predominantly, yes, sir.

8 Q The testimony on the record shows the
9 pins that you will see in this area are the people that
10 have run for office from this area between 1960 and
11 1970. And of course it shows the same thing in the
12 rest of the city. The colors indicate the specific years.
13 Those that were actually elected, the pins have been
14 blackened. Now, do you-- the testimony further showed
15 that Mr. Rudy Esquivel, one of these pins in here, is
16 the only one that had actually been elected from this
17 area over this ten year period. Now, with that predicate
18 in mind, let me ask you now, isn't it true that Senator
19 Bernal, in his first race, ran against Rudy Esquivel
20 and defeated him?

21 A That's correct.

22 Q Isn't it further true that in that parti-
23 cular race Senator Bernal was the choice of the people
24 that you call the powers that be?

25 A I don't recall whether he was or was not.

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2 Again, in Mr. Esquivel's election, there were other
3 factors, nonpolitical, that contributed to his defeat.
4 Where Mr. Bernal's support may have come from at that
5 time, I am not aware. They were both friends of mine
6 and I stayed out of it.

7 Q Now, you referred to that fact that Mr.
8 Vale-- I believe his father is Anglo?

9 A You said that. I am not aware of that.

10 Q I think the State asked you about that.

11 A I don't agree or disagree. As I under-
12 stand, his name is Vale (Reporter's Note: Pronounced
13 V-o-l-l-e-y), but pronounced Vale, from down in the
14 Valley.

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2 BY MR. IDAR:

3 Q He has the fortitudinous circumstance of
4 having a name that, for political purposes, can be pro-
5 nounced both ways?

6 A That's correct.

7 Q English and Spanish?

8 A Yes, sir.

9 Q Do you think that might be a factor in his
10 favor?

11 A It always helps when you can appeal to more
12 than one group for whatever reason.

13 Q You also testified that Commissioner Albert
14 Pena, Jr., is an office in San Antonio, and he was elected
15 from a predominantly Mexican-American area?

16 A I would say so, yes, sir, although there is
17 a large Anglo vote there.

18 Q That's right.

19 A In his area.

20 Q Would you agree with me that Commissioner
21 Albert Pena perhaps, not just in San Antonio, but in the
22 State of Texas as such is one of the most out-spoke Mexican-
23 American leaders that we have in the state?

24 A Yes, sir, I would say so.

25 Q And that he has become involved apart from

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2 his own interests in the Commissioners precinct that he
3 represents, that he has become involved with the farm
4 workers and their interests in improving their conditions?

5 That he has been involved in the Crystal
6 City situation in the past trying to organize Mexican-
7 Americans there to become effective politically?

8 A Yes, sir.

9 Q And that he has actually -- oh, I don't
10 know -- I don't want to belabor the time of the Court, but
11 really he is, perhaps, I would say from San Antonio the
12 most liberal -- in fact, he has been labeled as an extreme
13 leftist by some people, because of his advocacy of Mexican-
14 American causes. Is that correct?

15 A I wouldn't say that he has been labeled an
16 extreme leftist. If he has by some people, it is an
17 extreme minority, because I don't consider him so.

18 Q Do you believe that Commissioner Pena with
19 that type of background, if he was running county-wide,
20 could be re-elected in Bexar County?

21 A I don't believe that Commissioner Pena would
22 be elected county-wide but not necessarily for the reasons
23 that you have indicated. They are all restricted to local
24 Bexar County politics and the things that take place there
25 that are peculiar to Bexar County.

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2 Q Would you class some of his campaigns for
3 re-election as having been conducted or aimed to appeal
4 to the Mexican-American voting group in his precinct?

5 A Yes, sir.

6 Q That's what you were talking about a while
7 back when you said sometimes minority candidates may be
8 self-defeating themselves by using the ethnic factor?

9 A In county-wide races, yes. Now, if you have
10 a particular block that is captive to your particular pre-
11 cinct or district---

12 Q Right.

13 A ---and it is predominantly of one ethnic
14 group, and you appeal to them as an ethnic group, you have
15 got a cinch.

16 Q Now, Mr. Pete Torres, you mentioned, served
17 two terms on the San Antonio City Council?

18 A Yes, sir.

19 Q Wasn't he also, as a member of that Council,
20 a very outspoken individual?

21 A Yes, sir.

22 Q On issues that related to the Mexican-
23 American population, to those in the lower economic seg-
24 ments and so forth?

25 A Yes, sir.

1 CE - Barrera

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2 Q And one of the factors that contributed to
3 his defeat last year was the fact that he challenged the
4 present Mayor, that is, that he issued a challenge that he,
5 Pete Torres, was going to seek to become the Mayor of San
6 Antonio, and Mayor Gatty took him up on it and announced
7 for the same place and defeated Mr. Torres?

8 A There were two factors, in my opinion, since
9 you have asked for it, that defeated Mr. Torres.

10 Q One is, he slurred one of our prominent
11 black leaders in San Antonio to whom he incurred the wrath
12 of the black community in San Antonio.

13 A The other one, he opened his mouth just once
14 too often and incurred the wrath of other people.

15 Q Including Congressman Henry Gonzalez?

16 A Yes, sir, decidedly, right, because he
17 opened his mouth against Congressman Gonzalez also and
18 slurred him.

19 Q And Congressman Gonzalez because of his
20 incumbency and the Congressional Committee that he serves
21 on, particularly those dealing with the Military, in the
22 light of the Military installations that we have in San
23 Antonio, has managed to achieve a position of considerable
24 power there in San Antonio?

25 A Representative Gonzalez in my opinion has

1 CE. Barrera

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2 managed to reach a plateau of being able to represent all
3 the citizens of his district fairly and impartially, and
4 for that reason he has attained what he has attained.

5 Q And he came out against Pete Torres?

6 A Well, Pete Torres came out against him
7 initially and slurred him, and, of course, politically
8 he could expect retribution, and he got it.

9 Q All right. You stated that Gilbert Garza,
10 Leo Mendoza and Mr. Trevino are present members of the
11 San Antonio City Council?

12 A They are.

13 Q And were members of the particular slate
14 that the Good Government League in San Antonio endorsed
15 last year. Is that correct?

16 JUDGE JUSTICE: That the what league?

17 MR. IDAR: Good Government League.

18 A Yes, sir.

19 Q And were you familiar with the fact that
20 Mr. Trevino at that time, I think, was the Mayor pro tem
21 of San Antonio in the hope that the league would endorse
22 him for the Mayoralship?

23 A I don't know whether he had hoped that the
24 league would endorse him or not. I don't know.

25 Q Isn't it true that it took Congressman

1 CE - Barrera

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2 Gonzalez's influence to get Mr. Trevino on the Good
3 Government League ticket?

4 A That was rumored. Whether it was fact, I
5 don't know. I wouldn't dispute it. I just don't know.

6 Q You testified that in your opinion multi-
7 member districts prevent the population involved from a
8 full participation in the political process?

9 A No, I said that I don't believe that they
10 get as representative a representation as they might other-
11 wise get with single member districts.

12 Q Do you know how long we have had multi-
13 member districts for the San Antonio and Bexar County---?

14 A Frankly, I don't have any memory to the
15 contrary, so I guess as long as I can recall. I may be
16 in error, but I don't remember when we have not had them.
17 Let's put it that way.

18 Q The piece of paper over here had another
19 black area outlined in this part of the City, roughly,
20 the way we are looking at it, roughly to the east of the
21 orange area---.

22 A Would be black precincts, yes, sir.

23 Q Yes.

24 You also notice that although there have
25 been a few candidates from that area, there has been nobody

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2 elected.

3 Could you explain or give us some idea why
4 it is that under multimember districts that apparently
5 we have had in San Antonio -- we have never had any other
6 type -- we haven't had but one person elected from this
7 entire area involving Mexican-American, as well as the
8 black concentration?

9 A Well, I believe that under any system you
10 are still going to have to have people---

11 JUDGE WOOD: One minute. Something
12 has been injected into this case that I
13 think you all should know. I was a charter
14 member and organizing force of the Good
15 Government League.

16 If that is going to become important, and
17 I believe Mr. Barrera has worked with that
18 league, with the Good Government League.

19 Isn't that right?

20 THE WITNESS: I have, Your Honor.

21 JUDGE WOOD: And I think we were both
22 members of it. Is that important in this
23 case?

24 MR. IDAR: Well, Your Honor, they are
25 the ones that raised these issues, pointing

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2 out some of the people that are on the City
3 Council. I am sure that Mr. Barrera was
4 not unaware---

5 JUDGE WOOD: I mean as to whether I
6 should recuse myself in this case.

7 MR. IDAR: I certainly would not request
8 that or raise any objections to it.

9 JUDGE WOOD: Well, I just wanted to be
10 sure that the record reflected in the open
11 that, because I was a member, first, of the
12 Citizens Committee which was the organization
13 that originally raised the money to put in
14 Council-Manager Government, and thereafter, we
15 formed the Good Government League to broaden
16 the base, and, of course, naturally, I have
17 terminated any affiliation with that organiza-
18 tion since I was appointed to the bench. I
19 have no connection with the organization at
20 this time, but I certainly wanted the record
21 to reflect my prior connection with that if
22 that is an issue in this case.

23 MR. IDAR: As far as the Plaintiffs are
24 concerned, Your Honor, Your Honor, we have
25 the highest respect for the Federal Judiciary.

1 CE - Barrera

2 We are entirely aware of their independence
3 once they ascend this bench, and I, for one,
4 certainly am not about to call upon this
5 Court to recuse yourself.

6 JUDGE WOOD: Well, I just wanted to
7 make that disclosure in fairness to you.

8 MR. CURRY: The Defendants adopt the
9 same position, Your Honor.

10 JUDGE GOLDBERG: That has to do with
11 the same thing that I said yesterday about
12 the Civil Rights Commission---

13 MR. IDAR: Let me see.

14 Would you read my last question, please?

15 (PAUSE)

16 THE WITNESS: If I may, you were inquir-
17 ing about why candidates had not been elected
18 from those two areas.

19 REPORTER: (Reading) "Could you explain
20 or give us some idea why it is that under
21 multimember districts that apparently we
22 have had in San Antonio -- we have never
23 had any other type -- we haven't had but one
24 person elected from this entire area involving
25 Mexican-American, as well as the black concen-

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2 tration?"

3 Q Yes. Can you give us any explanation why?

4 A Yes. I started to say one explanation
5 is that regretfully but factually in those two areas there
6 are not the number of people who make themselves available
7 and stand for election to any post that is not going to
8 be remunerative to the point where they can make their
9 living from it.

10 By that I mean this, generally, the west
11 side and the east side is composed of working people,
12 people who work on a day-to-day basis, eight to five, who
13 have jobs that they depend upon for a living. I don't
14 know of any job that is less remunerative than a legis-
15 lative post, so, as a consequence, (1) if a man was elected,
16 chances are that he would find himself unable to discharge
17 his duties and responsibilities to the post and to his
18 family or to his own economic standing, for one.

19 Q Don't we have on the west side a Mr. Eloy
20 Centeno, who is the owner of a series of supermarkets---?

21 A Yes, sir.

22 REPORTER: Who?

23 MR. IDAR: Eloy Centeno, E-l-o-y,

24 C-e-n-t-e-n-o.

25 A That's correct.

1 CS - Barrera

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2 Q Do you think he wouldn't be qualified to
3 serve or able to?

4 A Without a doubt, but he doesn't live in
5 that area. He lives on the north side.

6 Q But he has his business---

7 A He has business, yes, as I have property
8 on the west side.

9 Q Don't we have other business men in the
10 area who could conceivably serve?

11 A No question.

12 Q All right.

13 A Business man, but they have not stood for
14 election.

15 Q Now, assuming that we were to draw what I
16 would term a neutral redistricting plan for the House of
17 Representatives for Bexar County -- I mean a plan that is
18 not particularly designed to give any one group a ready-
19 made district from which to run, can you conceive that by
20 drawing such a plan we could escape winding up with at least
21 two or perhaps three single member districts that would
22 encompass a good portion of those areas that I am talking
23 about?

24 A I would say this, Mr. Idar, in response to
25 that question, that certainly these areas would be entitled

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per se to representation, that they would be able to elect candidates from those particular areas, such as they might be drawn, and certainly improve their ability to elect candidates. There is no question about that.

The next question that remains would be for them to get these candidates to run.

Q I realize that, but my question is, under a fairly drawn plan that is not aimed at giving any particular group a district, you could not avoid giving these tremendously large geographical areas of the city with the population concentration that they contain---?

A Yes.

Q ---there is no way that you could avoid even without realigning, three or perhaps four single member districts where a person living in at least one of the districts would have a fair chance at election?

A That is correct. There is no question about it.

Q All right. Now, assuming that that was to happen, would that encourage more candidates from each of those particular districts to announce to run?

A There have been any number of things that have taken place here lately that have encouraged candidates to run.

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One, of course, is going to be, if it comes to pass, the taking away of the filing fee requirement.

The other is the poll tax payment requirement.

The other is that we have a more enlightened community now that has been exposed to the election process. Whether it would encourage more to run is a question again that is going to be dictated to these people by their economic circumstances. If there is someone within that area who is able to run, politically disposed to run, economically in a position to run and politically inclined, he will run and he will win, no question about it.

Q Are you acquainted with the fact that in last year's City Council election you had a slate of four or five people from that west side area---

A Yes, sir.

Q ---termed the barrio slate?

A Yes, sir.

Q And, of course, the San Antonio City Council doesn't pay any salary, that is, the people serving there don't get paid any salary?

A \$20.00 a meeting once a week.

Q Right, and it does require a considerable amount of time?

1 CE - Barrera

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2 A Absolutely.

3 Q But you did have a slate from the barrio
4 that announced---?

5 A Yes, sir.

6 Q ---for those positions?

7 A But none were elected.

8 Q Well, I realize that, but the point is, they
9 did make an effort to run?

10 A Oh, yes, no question.

11 Q They were willing to serve if elected?

12 A Well, to the extent that they were able,
13 because, you know, we have had people elected before, Mr.
14 Idar, who, after having been elected, have found them-
15 selves economically unable to proceed and have given up
16 the job.

17 Q Of course, we are speculating now as to
18 whether these particular people would have been in the
19 same boat.

20 A Well, I don't know.

21 Q All right.

22 A I know for certain that Mr. de la Garza,
23 for one, resigned because of the press of economic busi-
24 ness. Mr. -- he's the owner of a hotel -- prominent man
25 there in San Antonio. I said his name while ago, and it

1 CE - Barrera

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2 escapes me presently. He resigned and left the post.

3 Dr. San Martin said that because of---.

4 Q Mr. Barrera, I hate to cut you off. I want
5 you to give your full answer, but try to confine yourself
6 to my questions, please.

7 A All right.

8 Q You mentioned the filing fee, the poll tax,
9 and did you mention the Voter Registration Statute that
10 we now have?

11 A Yes, sir. Well, I meant that when I referred
12 to the removal of the poll tax.

13 Q Is it true that in every one of those
14 three cases those reforms have come about as a result of
15 litigation? In other words, didn't the Federal Court set
16 aside the poll tax requirements as unconstitutional?

17 A Yes, sir.

18 Q And isn't the question of the filing fee
19 before the Courts now allegedly because it is unconsti-
20 tutional?

21 A Yes, sir.

22 Q And the same thing with the Permanent Voter
23 Registration Act that just went into---?

24 A Yes, sir.

25 Q That is a result of litigation, where the

1 CH - Barrera

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2 Court held the prior statute to be unconstitutional?

3 A Yes, sir.

4 (No omission here.)
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1 Cross - Barrera

2 Q You indicated one of the problems
3 with the Mexican-American population was lack of participa-
4 tion in the political process -- a certain amount of
5 apathy, I would imagine?

6 A Yes, sir. That is not peculiar to
7 the west side. It is peculiar to the citizens, generally,
8 but it affects us mostly because we are the ones who are
9 suffering the most from it.

10 Q Assuming again that we had this
11 fairly drawn plan, as a result of which we might have
12 three or four single member districts with a good portion
13 of the people in those two areas we have been talking
14 about in each of those two districts, in your opinion,
15 would that increase the interest and the awareness of
16 those people in getting involved in the electoral
17 process of the Texas House of Representatives?

18 A Again, possibly so. I can only
19 call on my experience. When I served on the Edgewood
20 District, in a predominantly 100 percent Mexican-American
21 community in the school board elections, where there were
22 nothing but Mexican-American candidates proposing, their
23 candidacy for such an election, we would come up with a
24 total of 500 to 1000 votes in a school board election --
25 notwithstanding the efforts made to get the people out.

1 Cross - Barrera

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2 Q Well, of course, school board
3 elections as a rule, unless you have a hotly contested
4 issue, the electorate turns out in very minor portions
5 regardless of whether it is in a Mexican-American district
6 or any other district; isn't that generally true?

7 A Yes, sir. We are talking about
8 interest in the election process.

9 Q You mentioned, also, here as to
10 Catholics and Protestants?

11 A Yes.

12 Q Well, obviously none of us are
13 advocating we set up a single member district for the
14 Catholics or Protestants.

15 A No. I didn't mean to imply that.

16 Q These are disbursed all over the
17 community. You have as many Catholics -- well, maybe not
18 as many -- but you have Catholics in every section of
19 San Antonio and they are not concentrated in any one area,
20 are they?

21 A I say you have a larger concentra-
22 tion of Catholics on the west side than any other section
23 of the City, yes.

24 Q We were speaking of -- or rather,
25 you made reference to Senator Bernal in your testimony.

1 Cross - Barrera

2 And, I would ask you whether or not in your opinion,
3 Senator Bernal is now acquiring the reputation of being
4 a fairly outspoken Mexican-American leader in San Antonio?

5 A Yes, sir.

6 Q Isn't it true that he refused, as
7 a State Senator, to go along with the Governor in the
8 appointment of an individual in San Antonio because he
9 happened to be a member of a certain organization in
10 that community?

11 A Two individuals, yes, sir.

12 Q All right, sir. And, his grounds
13 for objecting to these people is the fact that that
14 particular organization did not include, and never had,
15 any membership of Mexican-Americans?

16 A That is correct.

17 Q Isn't it true that Senator Bernal
18 also has been quite active in combating what is allegedly
19 a problem of police brutality that present exists in San
20 Antonio?

21 A I don't know that it exists. I know
22 that there has been a discussion about it. I am not
23 aware of the facts as to whether it does or not exist.

24 Q I used the word "allegedly". But,
25 the point I am trying to establish, isn't it true that

Cross - Barrera

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Senator Bernal has come to the fore -- in fact, recently, didn't he take several alleged victims of police brutality before the District Attorney, the State Grand Jury and so forth?

A Yes, sir.

Q And, in other ways, the Senator has managed to become recognized as a Mexican-American leader?

A Yes, sir.

Q All right. My final question, Mr. Barrera, do you consider yourself as an outspoken Mexican-American leader in the same light as Albert Pena or Joe Bernal?

A We do not speak in the same way, but I speak as loudly as they do.

Q Have you spoken on any particular issues of direct concern to the Mexican-American?

A We don't take the same approach, Mr. Idar.

MR. IDAR: Thank you, sir.

MR. McDANIEL: I have no further interrogation.

CROSS EXAMINATION

Croses - Barrera

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QUESTIONS BY MR. EASON:

Q Mr. Barrera, I am Nathan Eason from San Antonio. I believe you stated a moment ago that -- words to the effect that there was a better understanding between the various ethnic groups in San Antonio, were of a cohesiveness of getting along together. Is that correct?

A Yes, sir.

Q Now, you have pointed out a section of San Antonio which we refer to as the west side, which is predominantly Mexican-American. Would it be fair to say that there is a predominantly republican area in San Antonio?

A Yes, sir, the northeast section of the County.

Q All right. With reference to Exhibit BI-143, which was pointed out to you a while ago, would this be the area? (Indicating). Can you read these numbers?

A Yes.

Q Alamo Heights, Terrell Hills and the northeast part?

1 Cross - Barrera

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2 A Yes, sir, the precincts in the
3 300 range.

4 Q All right, sir. That would be
5 specifically there? (Indicating). Also, would it be
6 also true of some entirely across the northeast --

7 A The northeast portion of Bexar
8 County, the extreme northeast portion, yes, sir.

9 Q Thank you, sir. Now, it has been
10 testified to in this case that the Republicans have never
11 won a legislative race in Bexar County; would this be
12 true as far as you can recall in your political activities?

13 A I would say that is correct, yes.

14 Q But, of course, we do have the
15 members running at large for the Legislature?

16 A Yes, sir.

17 Q You stated a moment ago, I believe,
18 on examination from Mr. McDaniel, that you personally
19 favored single member districts?

20 A Yes, sir.

21 Q Would you care to tell us your
22 reasons for this, please?

23 A Well, I believe that without regard
24 to the people involved necessarily, but just that I
25 believe that single member districts would be more

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representative of the people in the particular district. In other words, that everyone in the County would have a representative, good, bad or indifferent, that would represent them.

Q Well, would it be fair to say that the representative himself would know his constituency better and the constituency would know their legislator better?

A Yes, sir, I would certainly think so.

Q So, there would be more of a community of interest between the constituency as individuals?

A Yes, sir.

Q All right, sir. Now, while you have testified that a Republican has never won a race for the State Legislature, this area that you pointed out in the 300 block -- I believe those are voting precincts, are they not?

A Yes, sir, these are voting precincts.

Q In the voting precincts, would you say, from your experience in politics in Bexar County, that in a national election that the Republicans would carry this area in San Antonio? (Indicating).

1 Cross - Barrera

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2 Q That particular area?

3 A Yes, sir.

4 Q Yes, sir, I would think so.

5 Q Now, bearing in mind that you say
6 that there has been action in San Antonio and Bexar
7 County in which the different ethnic groups have tended
8 to come together and understand each other, would you
9 say that there would be more of a community of interest
10 between the people, say, of northeast San Antonio and
11 a balance of San Antonio and Bexar County, or a section
12 which combined the northeast section of San Antonio
13 with Starr, Jim Hogg, Duval and Zapata Counties? Would
14 you have an opinion on that?

15 A I would say they would be slightly
16 out-numbered by Democrats. The interest certainly
17 would be at variance, as I see it in my opinion.

18 Q Between northeast San Antonio and --

19 A And there is no question about
20 it in my mind.

21 Q And, that would be political, is
22 that correct?

23 A Yes, sir.

24 Q And, would it be economic?

25 A Economic.

Cross - Barrera

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Q State, Mr. Barrera, if you know, whether or not this section of San Antonio we are referring to -- what you identify as a Republican section -- has a Democratic or Republican J.P. out there?

A They have a Republican J.P.

Q Do they have a Republican or Democrat County Commissioner?

A They have a Republican County Commissioner, Commissioner Vaughn.

Q All right. Mr. Barrera, now, how many County Commissioners do we have in Bexar County?

A Four.

Q And, how many Mexican-Americans are on that?

A One.

Q And, that would be Albert Pena, is that correct?

A That is correct, Precinct 1.

Q I believe you pointed out roughly as a guideline, that the Republicans -- strike that -- that the Anglos and the Mexican-Americans roughly had about the same percentage?

A I would say I believe they are exceeded a little by the Anglo, but they are running

1 Cross - Barrera

2 pretty close.

3 Q All right. Prior to Albert Pons,
4 was there ever a Mexican-American Justice of the Peace --
5 no -- County Commissioner in San Antonio, in Bexar
6 County, if you recall?

7 A Not within my memory. Callaghan
8 again, with the name that he had, -- but knowing his
9 ancestry -- may have been a County Commissioner way back,
10 but I am not too sure of that. I know we had Johnny
11 Ouden, but again, he was a Mexican with an Irish name,
12 so that helped.

13 Q Mr. Barrera, has there ever been
14 a Republican Congressman -- I am sorry -- a Mexican
15 Congressman from San Antonio prior to Henry B. Gonzalez,
16 as far as you know?

17 A No, sir.

18 Q Was there ever a Mexican State
19 Senator from San Antonio prior to Joe Bernal and Henry
20 Gonzalez?

21 A Henry Gonzalez was the first one,
22 to my knowledge, unless we go way back to the early days
23 of Texas.

24 Q I believe you pointed out a while
25 ago that Judge Cadena, of the Court of Civil Appeals, of

1 Cross - Barrera

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2 course, was appointed by Governor Connally and has since
3 succeeded himself uncontested?

4 A Yes, sir.

5 Q There are three men on this Court,
6 is that correct?

7 A That is correct.

8 Q Did you ever know of another
9 Mexican-American that ever held that position?

10 A No, sir.

11 Q When is the last time that you
12 recall that there has been a contested race for the Court
13 of Civil Appeals in San Antonio?

14 A The last election, when Judge Charles
15 Grace ran against Judge Klingeman.

16 Q I forgot about that. But, before
17 that?

18 A Before that, I don't recall.

19 Q It is rarely contested?

20 A Yes, sir.

21 Q Is this correct?

22 A Yes, sir.

23 Q Now, I believe you stated that
24 Judge Johnny Benavides -- like you, I don't remember the
25 number of the Court -- but he is a District Judge, State

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District Judge in San Antonio?

A That is correct.

Q Now, how many District Courts do we have in San Antonio?

A We have got about --

Q About a dozen?

A Yes, about 10 or 11 now.

Q I believe there are 11, Mr. Barrera. Now, there is no other Mexican-American sitting on the bench in San Antonio?

A No, sir.

Q Do you ever recall another one prior to Judge Benavides?

A Judge Benavides was the first one.

Q Yes, sir. Now, in the County Courts, including the Probate Court and the County Civil Court at Law, and the three County Courts at Law, I believe this is correct --

A That is correct.

Q -- Judge Hippo Garcia is on the County Court at Law Number 2 bench?

A That is correct.

Q Has there ever been, to your knowledge, a Mexican-American sitting on any of those

Cress - Barrera

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benches?

A No, sir, other than Judge Garcia.

Q And, you referred to -- I am sorry.

I am not sure if it is Judge Hernandez --

A Judge Mike Hernandez.

Q On the two local downtown -- place

1 --

A And Judge Gutierrez.

Q And Judge Gutierrez.

A Yes, sir.

Q Place 1, J. P. benches. Now, of

course, the Precinct 1 is where they come from, is that correct?

A That is correct.

Q It is place 1 and place 2 of

precinct 1?

A That is correct.

Q Would you tell us roughly what

Precinct 1 involves?

A Precinct 1 involves roughly the

old city limits of San Antonio, and they stretched at

that time as far as 24th Street. It is primarily, I

would say, what is now the heart of San Antonio -- it is downtown.

1 Cross - Barrera

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2 Q Sort of the old core City?

3 A Yes.

4 Q And, this would be predominantly
5 Latin American?

6 A It would be now, in my opinion.

7 Q Yes, sir. And, before that, I
8 believe you said Judge Cyden, who enjoyed this -- not
9 unique -- but having a Mexican background?

10 A It is getting less unique, but it
11 was at that time.

12 Q Yes, sir.

13 MR. HASON: I believe that is
14 all.

15 JUDGE GOLDNERG: Any other
16 questions?

17 MR. CROUCH: Your Honor, I have a
18 couple of questions.

19
20 CROSS EXAMINATION

21
22 QUESTIONS BY MR. CROUCH

23
24 Q I would just like to ask one
25 clarifying question. Is it true that in San Antonio a

Cross - Barrera

Justice of the Peace, County Commissioners, the Congressmen, and the State Senators are elected from single member districts?

A Yes, sir.

MR. CROUCH: Fine. Thank you.

JUDGE GOLDBERG: I would like to ask one question.

QUESTIONS BY JUDGE GOLDBERG:

Q In the setting up of the single member districts, enumerate, if you will, the ingredients and the elements that must go in on the determination of those districts.

A Well, the Court is asking for my opinion, and I would say --

Q You qualify as an expert, Mr. Barrera.

A All right. I would say that certainly they should encompass population, primarily.

Q Equality of population, you mean?

A Yes, sir.

Q All right.

A And, frankly, just taking a line and sweeping it around the County and just let it fall where it may, population-wise, depending on the number

1 Questions by Judge Goldberg:

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2 of legislators to be assigned to Bexar County, and just
3 sweep around Bexar County and let the lines fall where
4 they might, population-wise.

5 JUDGE GOLDBERG: Thank you.

6 JUDGE WOOD: You wouldn't try to
7 make any particular -- put any emphasis
8 on including ethnic groups in any one
9 district, would you, Mr. Barrera?

10 A Well, Judge, I would not for this
11 reason: that we are talking, primarily about the Black,
12 the Mexican-American and the Anglo and ignoring completely
13 again, the Jewish population that is in San Antonio,
14 ignoring the Lebanese population and the Italian popula-
15 tion. We would be in Court again from their standpoint
16 saying their particular part of town were not taken into
17 consideration. And, I think that it would fairly give
18 everybody the representation that they seek if these
19 lines were drawn according to population in one giant
20 sweep around the County.

21 JUDGE GOLDBERG: Have you studied
22 the Senatorial District involving Bexar County?

23 A Only to the extent, Your Honor, of
24 having recommended to the Redistricting Board that Judge
25 -- I mean that Senator Bernal's district, District 26, be

left essentially as it was and as

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he proposed it. He wrote the letter to me asking if I would recommend to the Redistricting Board that his District be left alone. I felt at that time, still do under the circumstances, that the West side of San Antonio needs a voice in the Senate; that the population of Mexican-Americans in San Antonio, as such, -- that it rates and wants someone who is attuned, particularly to the needs and the problems that exist there. I think that Senator Bernal is tuned to those problems and has been a voice for them. I think it precludes other problems. I know what has happened up in the eastern part of the County insofar as the Republican precincts are concerned; I am not too sure that that was the right thing to do. Of course, again numerically and mathematically, I didn't take part in it, so I don't know what the other solutions would be.

JUDGE GOLDBERG: You mean with respect to going these counties?

A Yes, sir. I don't think that there is any similarity of the people living in those areas at all.

JUDGE WOOD: You are speaking of 19 and

21?

A Yes, sir. 19 and 21.

JUDGE WOOD: Senatorial districts 19 and 21.

Now, are you familiar with the outlines of those two senatorial districts, Mr. Barrera?

A Only vaguely as is now proposed, and which has brought this litigation. Up to that point I have been interested primarily in 26. I am aware that Precinct 26 or that District 26, in which I am living and a resident of, is Senator Bernal's district.

JUDGE WOOD: What fault do you find, if any, with senatorial districts 19, 21 and 26, evaluating them all three as far as you understand?

A 26, I find none, and I forget which-- whether it is 19 or 21-- but the district that is now comprised of a portion of Bexar County, the northeast portion of Bexar County and extending down to the border, I think that it is not truly representative of the people

1 C.E. - Barrera
2 in that area. The community of interest, economic and
3 social and political, are just--

4 JUDGE WOOD: --Would you have some plan
5 for changing that?

6 A No. I say I don't have the solution
7 because I have not been exposed to it to the extent of
8 looking for a solution, so I don't quarrel with the people
9 who drew it up that way. It may be that is the only way
10 to draw it up.

11 JUDGE WOOD: That's all I have.

12 JUDGE GOLDBERG: That's all.

13 MR. EASON: Could I ask one more question,
14 please, in light of what has been brought up?

15 BY MR. EASON:

16 Q Mr. Barrera, I believe you stated that
17 Mr. Vale was the only Mexican-American elected from
18 Bexar County to the legislature at this time?

19 A Yes, sir.

20 Q And there are no Republicans elected?

21 A Not to my knowledge, no, sir.

22 Q Now, using the plan that you described
23 of drawing it up in single-member districts and letting
24 it fall where it may, do you have an opinion as to how
25 many Mexican-Americans and how many Republicans might be

1 C. E. - Barrera

2 elected to the Texas Legislature from Bexar County?

3 A Just very roughly, and taking into consi-
4 deration the number of representatives that we have, I
5 would say that the west side would possibly draw about
6 three; that the northeast Bexar County might get about
7 one or two-- one and a half to two.

8 Q Thank you.

9 JUDGE JUSTICE: Next witness?

10 JUDGE WOOD: I am sorry we had to take
11 you away from the case with Judge Suttle.

12 A Thank you.

13 JUDGE JUSTICE: Do you desire to call
14 your next witness out of turn?

15 MR. McDANIEL: Yes, sir. Thank you, Mr.
16 Barrera. We express our gratitude for having
17 you come. I call Mr. Gilbert Garza.

18 GILBERT GARZA.

19 a witness called by the Defendant, after having
20 been first duly cautioned and sworn to testify
21 the truth, the whole truth and nothing but the
22 truth, testified as follows:

1 D. E. - Garza

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2 DIRECT EXAMINATION

3 Questions by Mr. McDaniel:

4 Q Would you state your name, please?

5 A My name is Gilbert Garza.

6 Q And Mr. Garza, where were you raised, sir?

7 A In San Antonio.

8 Q Whereabouts in San Antonio?

9 A I guess you could call it the area
10 that is now known as Model Cities Area.

11 JUDGE JUSTICE: Now known as what?

12 JUDGE WOOD: Model Cities.

13 A Model Cities Area.

14 Q It is over on what you have referred to,
15 if you have been sitting there for a few moments, as
16 the west side, is it not?

17 A It is the northwest. Northwest area of
18 the Model Cities Area.

19 Q Do your parents still live there?

20 A Yes, they do.

21 Q Where did your parents come from, Mr.
22 Garza?

23 A From two small towns close to Monterrey,
24 Mexico.

1 D. E. - Garza

2 Q Do your parents speak English?

3 A One does; the other one still does not.

4 Q What is the economic circumstances of
5 your parents?

6 A I would probably place them in the poverty
7 area at this time. My father-- there were only two
8 children; just my brother and I and my mother. I imagine
9 my father has really never made over maybe \$3,000.00 a
10 year which would place them in this category at this
11 time.

12 Q Do you feel-- do you live-- where do you
13 live?

14 A When I got married approximately twenty-
15 three years ago I moved out of the area but only two
16 blocks north and still live fairly close to my mother
17 and father.

18 Q Do you feel like you still have ties to
19 this area?

20 A Very definitely.

21 Q What education have you had, Mr. Garza?

22 A High school education.

23 Q Have you had any technical training?

24 A Yes. In architecture.

25 Q Are you a licensed architect?

1 D. E. - Garza

2 A Yes, I am.

3 Q And how long have you been an architect?

4 A Since 1963. I took my exam here in
5 Austin and passed it.

6 Q Where do you office in San Antonio?

7 A In the Tower Life Building.

8 Q Are you one of the partners in the firm?

9 A Yes, I am.

10 Q What is your firm name?

11 A CGR; Cerna, Garza and Raba, Incorporated.

12 Q When did you first become-- well, let me
13 first ask, are you interested in politics?

14 A Very definitely.

15 Q When did you first become interested in
16 politics?

17 A I guess about 1960. I joined an organi-
18 sation that is very active civically, which is LULAC.
19 After I was there six months I became its president
20 and I was president for two years in '62 and '63. Well,
21 '61-'62 and '62-'63. And I became interested in politics,
22 although the organization is a nonpolitical organization.
23 It has still got to be interested in civic affairs.

24 Q Are you still active in LULAC?

25 A Not as active as I would like to be. I am

1 D. E. - Garza

2 still a member.

3 Q Have you formed other associations for
4 political reasons?

5 A Yes, I have. I have been a member of
6 the Good Government League for about ten years.

7 Q Would you explain for members of the
8 Court who are not familiar with San Antonio and Bexar
9 County, generally what the Good Government League is
10 in San Antonio?

11 A It is a nonpartisan political group.
12 The reason I say nonpartisan is because it has members
13 of both parties. My wife is a Republican and I am a
14 Democrat, for example. We are nonpartisan. But it is
15 an organization that was formed some fifteen years or
16 sixteen years ago to bring the manager-mayor form of
17 government or mayor-manager form of government to San
18 Antonio, and it has been to some degree very successful
19 in the past fifteen years.

20 Q Is its composition ethnically nonpartisan
21 also?

22 A It has no restriction whatsoever as far
23 as ethnic.

24 Q Have you in the past, or do you now hold
25 any political office?

1 D. E. - Garza

2 A I hold an office now. I am a city
3 councilman there in San Antonio.

4 Q When were you elected to the City Council?

5 A In April of last year.

6 Q Now, in the City Council race, the Good
7 Government League runs a slate, does it not?

8 A Only to the extent that it gets involved
9 during election time, but at least this is what I have
10 found since I have been on the council, that once you
11 become elected, you are pretty well much on your own.

12 Q Is the whole council at this time
13 composed of people endorsed by the Good Government
14 League or are there some other council who are not?

15 A All the council members at this time
16 are-- were endorsed by the Good Government League.

17 Q In the last election, were they?

18 A In the last election, yes, sir.

19 Q Prior council, was it all Good Government
20 League or were there some that were not?

21 A No. There were two out of the nine.
22 I ran against one of the incumbents, one-term incumbents.

23 Q Who did you run against?

24 A Dr. Ford Nielsen.

25 Q Who was the other incumbent who was not

1 D. E. - Garza

2 a member?

3 A Pete Torres.

4 Q Who ran against him?

5 A Mayor Gatti ran against Pete Torres and I
6 ran against Dr. Nielson.

7 Q How was it decided, if you know, who
8 should run against whom?

9 A Well, I think I pretty well decided to
10 run against Dr. Nielson quite some time before the
11 election. And I think I made my mind up to run for
12 City Council about eight months prior to the election
13 and I just started working toward that end. I felt I
14 had a good chance against Dr. Nielson.

15 Q And did you feel that Mr. Gatti had a
16 good chance against Mr. Torres?

17 A No, not really. It was a fairly tight
18 race, as far as I could see.

19 Q And in that type race in San Antonio,
20 I take it you defeated Mr. Nielson who was an Anglo,
21 was he not?

22 A Yes, sir. That's correct.

23 Q And Mr. Gatti, who is an Anglo, defeated
24 Mr. Torres, who was a Mexican?

25 A Mexican-American, yes.

1 D. E. - Garza

2 Q What, in your judgment, wins elections
3 in San Antonio in Bexar County?

4 A Well, I think you have to be practical
5 about the thing in general, exposure means a great
6 deal. For example, I think in the first race-- I was
7 in a runoff with Dr. Nielson, there with Dr. Nielson,
8 the incumbent, and two other candidates-- Mexican-
9 American candidates in the same race I was in. I think
10 that the exposure that I had, particularly, having been
11 a complete unknown up until I ran, had a lot to do with
12 it. And really when you really come down to it, it is
13 a question of financial capabilities to become known in
14 a particular area where you are unknown.

1 DE - Garza

2 Q Would you say then that it is fair to say
3 that regardless of race -- I'm talking about political
4 race now -- and regardless of whether single member dis-
5 tricts or multimember districts are used, and I am referring
6 now to City Council, as well as State Legislature, because
7 I understand there is some movement afoot in San Antonio
8 to break the Council into single member districts, rather
9 than at large, too. Is that correct?

10 A Yes.

11 Q Would you say that in either type of race
12 that the better financed candidate has an advantage?

13 A Yes, I would say so. I would say that
14 single member districts would insure, of course, certain
15 ethnic balance, if this is what we are trying to achieve,
16 in Bexar County, but really, when we start talking about
17 discrimination, really, I think the Republicans are pro-
18 bably more discriminated against in San Antonio.

19 Q Now, if you had single member districts in
20 Bexar County, I take it from what you said, that as far as
21 political philosophy and everything is concerned, that the
22 people who have money would still back their respective
23 political beliefs, regardless of whether they were in an
24 area---?

25 A I think so.

DE - Garza

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Q ---where both sides were backing---

A If you had single member districts, for example, on the west side, I think there is still enough differences of opinion among men that there would be two candidates opposing each other for a particular slot in any area that you may happen to delineate, and if they run on a particular ticket, the better financed ticket, of course, is going to have a better chance to win in that particular district. I think that this has been proven in the past in many races.

Q Were you in the courtroom when Mr. Barrera was giving most of his testimony?

A Most of it. I was absent at the very first part.

Q Do you agree with his testimony that interests or conversely apathy is one of the major political problems of the Mexican-American in San Antonio?

A I would have to agree with that. I want to say this, because I heard the statement made about the San Antonio Independent School District, and I ran for the San Antonio Independent School District some eight years ago, maybe seven.

At that time, even with a large majority of Mexican-Americans in that district, and I think Mr. Idar

1 DE - Garza

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2 made that point, there were only 2,500 people voting in
3 the election. You could almost say that only the teachers
4 and the administrators, because that is approximately how
5 many teachers and administrators there are in the district.
6 Probably those are the people who decided the election
7 for the San Antonio Independent School District.

8 Q Do you agree with them also that there would
9 be problems, insofar as finding candidates who, because
10 of interest and economic ability, would be able to hold
11 office in the west side?

12 A No, I disagree with him there, Mr. McDaniel.
13 I think you could find candidates in any part of the city,
14 whether they could survive on whatever remuneration they
15 got from the political office or public office, of course,
16 is purely conjecture.

17 Q Mr. Garza, do you feel that the Mexican-
18 American in San Antonio has the opportunity, even under
19 multimember districts, to have a full and effective voice
20 in San Antonio and Bexar County politics?

21 A I think they have the opportunity, but it
22 is rather restrictive with the multi type district.

23 As I said previously, I think there are --
24 single member districts have been proven over the country
25 in your senatorial races, for example, as far as the

DE - Carra

625

Government is concerned, the U. S. Government. Senatorial districts for the state, et cetera, et cetera, but if we are just talking about having an opportunity, I think there is an opportunity, but whether it is a full opportunity or not, it is kind of questionable.

Q All right. Do you agree with Mr. Barrera that the Anglo and Mexican-American population -- which I might say to the Court -- I detest both terms and also Afro-Americans. We are either Americans or we are not, one of the two -- are approximately of equal size in San Antonio?

A In population?

Q Yes.

A I would -- I was under the assumption that Mexican-American was a little larger in the majority, as far as population is concerned. Of course, I may be wrong.

Q I had Mr. Barrera affirm the composition of the present City Council in San Antonio.

Would you tell the Court, please, in your City Council election which candidate led your ticket?

A Dr. Hilliard.

Q And of what particular ethnic group is Dr. Hilliard?

DE - Garza

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A He is a black.

Q Which perhaps goes to illustrate, does it not, that he had an appeal to both Anglo and Mexican---

A Well, let me say---

Q ---which was equal?

A Let me say that he did run with the ticket, and this has a certain amount of appeal.

Q Do you feel that either the Mexican-American or the Anglo-American vote on purely ethnic background in San Antonio?

A I think certain ethnic groups do. I wouldn't say the majority of the people do this.

Q You mean certain people in each ethnic group?

A In each ethnic group, yes.

Q Do you have any particular basis in mind for your opinion that a certain element of each ethnic group does, and another element of it does not?

A I didn't understand the question.

Q Do you have any experiences of your own which would indicate to you that, say, Anglo-Americans will vote for Mexican-American candidates or vice versa?

A Well, I think I have to look at my own race in this last city election and could pretty well tell

DE - Garza

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you that my support came from the north side, approximately 60 boxes out of the north side, and, here again, I have to say that I concentrated on these 60 boxes.

Q By work and money, you mean?

A By work and money and energy, primarily, because Dr. Neilson was fairly strong on the west side of town and on the east side of town.

Q The areas you are referring to that Dr. Neilson was strong in are predominantly Mexican-American and Black?

A And black. However, on the runoff I concentrated, once I saw the total picture, then I concentrated on most of the city, and I only lost 28 out of 227 boxes.

Q Would you consider your race a practical illustration of practical politics in San Antonio?

A You could do that if you wanted to.

MR. McDANIEL: Thank you very much.

CROSS-EXAMINATION

BY MR. IDAR:

Q Isn't it true, Mr. Garza, that as far as

1 CE - Garza

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2 the San Antonio City Council race last year that there
3 were a number of factors, a number of personalities, that
4 resulted in the outcome?

5 A Yes, sir, that is correct.

6 Q That a very strong effort was made by the
7 Good Government League to get rid of the two thorns in
8 their side, Pete Torres and Dr. Neilson?

9 A No question about it.

10 Q And that you were a beneficiary of the
11 people that were supporting the league to a very large
12 extent?

13 A I think we all were.

14 Q Are you familiar at all with the campaign
15 expense reports that were filed by yourself and the other
16 candidates?

17 A To some degree, yes, sir.

18 Q Let me ask you if you are familiar with
19 this figure. A report was filed on March 29 with your
20 City Clerk, I believe. I believe this was preliminary
21 to the first election, reflecting the fact that the
22 league had spent \$81,647.99.

23 Would you agree that that is a fact?

24 A That is substantially true, yes, sir.

25 Q A subsequent report after the election was

1 CE - Garza

629

2 filed on April 16, reflecting the fact that another
3 \$40,666.21 was spent. Is that correct?

4 A That is about correct, yes, sir.

5 Q Finally, another report was filed in
6 connection with your race against Dr. Nailson in the
7 runoff, reflecting the fact that \$30,111.64 were spent?

8 A That's about right.

9 Q And the grand total of expenditure by
10 the league in both elections, supporting the nine people
11 on its ticket, came to \$152,425.84. Is that correct?

12 A That is about right, sir.

13 Q Now, you are aware that certain barrio
14 candidates -- they term themselves barrio candidates or
15 candidates of the slum, in effect, from the west side, ran?

16 A Yes, sir, I had one candidate in my race.

17 Q They filed an expense report, reflecting
18 the fact that they spent \$6,502.60.

19 A How much, sir?

20 Q \$6,502.60. Do you have any reason to
21 quarrel with the accuracy of that?

22 A No, I wouldn't quarrel with that.

23 Q You stated earlier that you certainly
24 mounted a strong effort and had quite a bit of support --
25 would you agree with me that this type of financial support

1 CH - Garza

2 certainly was a tremendous factor in your election, as
3 well as that of the other candidates of the Good Govern-
4 ment League slate?

5 A I think I made that point from the very
6 beginning.

7 Q Yes.

8 A That it is very vital in any election.

9 Q Now, in Bexar County getting your name
10 known, whether it is for City Council or for any other
11 county-wide race, county office, county judge, or House
12 of Representatives in the case before this Court, expo-
13 sure, I think you mentioned was a big factor?

14 A Exposure.

15 Q That means the use of radio, television
16 and newspaper advertising?

17 A Primarily television.

18 Q All right. Going back to the reports that
19 the Good Government League filed, the first report of
20 March 29 reflects the fact that of the eighty-one thousand-
21 odd dollars spent \$65,739.65 were spent for publicity.
22 Is that correct?

23 A That sounds about right.

24 Q And the second report, out of the 40-odd
25 thousand dollars spent \$34,934.91 was spent for publicity?

1 CE - Garza

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2 A Uh-huh.

3 Q That is correct?

4 A About right.

5 Q And finally, on the third report out of the
6 \$30,000.00, \$25,661.53 were spent for publicity?

7 A Which bears out what I have been saying.

8 Q Exactly.

9 A Yes.

10 Q I just wanted the record to reflect the
11 actual figures.12 Now, assuming that you had single member
13 districts in San Antonio that would encompass a total
14 population of somewhere around 74,000 people and probably
15 not over 35,000 of those actually people registered to
16 vote, do you think that type of expenditure would be
17 required by any candidate to have a fair opportunity to
18 run in such an area?19 A I don't think that that type of expendi-
20 ture would be necessary for single member districts, but
21 this does not preclude that that much money would be
22 spent.23 Q Right, and you could still have a well-
24 financed, well-organized group of powers that be in the
25 community to raise that kind of money for their candidates?

1 CH - Garza

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2 A This is the point.

3 Q But wouldn't this type of system give the
4 opportunity for most people who are actually living within
5 those districts that are not within this power block to
6 have an opportunity to run their candidates and have a fair
7 chance of electing them?

8 A I think I have said that before, yes, sir.

9 Q Wouldn't you almost be able to canvass this
10 district house to house?

11 A No question about it.

12 Q And wouldn't need the radio, newspaper and
13 television exposure, would you?

14 A Probably.

15 Q Do you believe in the concept that that
16 Government is best which is closest to the people?

17 A No question about it.

18 Q Would that be true of the single member
19 district in contrast to the multimember district that we
20 now have?

21 A I think that single member district does
22 bring people closer to its representatives.

23 Q I believe that some people of my staff con-
24 tacted you and other members of the City Council several
25 months ago when we were seeking to obtain your views as to

1 CE - Garza

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2 whether you believed that the San Antonio City Council
3 should be elected on a single member district basis.

4 A Yes.

5 Q Do you recall that Miss Gloria Cabrera
6 talked with you?

7 A That is correct.

8 Q And do you recall indicating to Miss Cabrera
9 that you did believe in that concept for the City Council?

10 A And I still do.

11 Q Do you think that the -- would you have the
12 same belief in relation to the Texas House of Representatives?

13 A I think that single member districts would
14 probably---.

15 MR. IDAR: Thank you, sir.

16 THE WITNESS: ---work better, as far
17 as the Legislature is concerned.

18
19 CROSS-EXAMINATION

20
21 BY MR. EASON:

22
23 Q Nathan Eason of San Antonio.

24 Mr. Garza, you do favor the single member
25 district system. Is this true?

1 CE - Garza

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2 A I think I do, yes, sir.

3 Q Of the 11 legislators in San Antonio there
4 is one Mexican-American that is presently serving Bexar
5 County in the Legislature. Is this correct?

6 A Yes, sir.

7 Q And I believe you stated your wife is a
8 Republican. Do you know of any Republicans in the State
9 Legislature?

10 A None at all.

11 Q Do you know of any who have ever been
12 elected from Bexar County?

13 A No, sir, I can't think of any.

14 Q Do you have any opinion as to how many
15 Republicans would be elected and how many Mexican-Americans
16 would be elected should we divide Bexar County into single
17 member districts?

18 A If we generalize about Mexican-Americans
19 and Republicans, I think that probably generally we would
20 probably talk about maybe three Mexican-Americans, possibly
21 two Republicans, maybe three.

22 Q Yes, sir. Now, you were in the courtroom
23 when Mr. Barrera testified, were you not?

24 A Yes, sir.

25 Q I don't know whether you can see this map or

1 CE - Garsa

635

2 not, but Mr. Barrera indicated this area in here around
3 Alamo Heights and Terrell Hills (indicating) was generally
4 regarded as a Republican stronghold or as Republican terri-
5 tory.

6 Now, in your interests in the activities of
7 politics, as you stated a while ago, have you formed an
8 opinion as to whether or not there is an identifiable
9 Republican area in San Antonio and Bexar County?

10 A Yes, sir. I think that you can say the
11 Northeast is identified more as a conservative area.

12 Q Yes, sir. Perhaps that is a good definition,
13 but the people in this area are conservative. Is this
14 correct?

15 A Yes, sir, they are conservative.

16 Q Now, in Senatorial District 21 are you
17 familiar with the two districts that are wholly within --
18 under the new plan adopted by the Board the two districts
19 which are wholly within Bexar County and the one which
20 takes in about a hundred ten thousand people from Bexar
21 County and incorporates it with the lower--.

22 A The Rio Grande Valley?

23 Q Sir?

24 A The Rio Grande Valley?

25 Q Well, let me hand you -- I believe I have it

1 CX - Garza

636

2 here---. Now, this is part of the plan as adopted
3 by the Board on October 15th, and I understand it has
4 already been admitted into evidence by the stipulations
5 in the Pretrial, and the thing that I am looking at
6 principally now and would like to show the witness is the
7 Legislative Redistricting Board plan as it affects the
8 Senate Districts in the State of Texas and also the one --
9 that portion which is blown up of Bexar County.
10

11 Mr. Garza, I am speaking specifically about
12 Senatorial District 21, 26 and 19.

13 Have you seen this plan before (indicating)?

14 A No, I have not. I was familiar with District
15 26, because that is the district I live in.

16 (No omission here.)

Cross - Geras

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Q And, that is Senator Bernal's district?

A Senator Bernal's district.

Q And, Senator Kethmann presently represents District 19?

A 19, that is correct.

Q And 21 is made up roughly of that portion of Senator Wayne Connally's district, plus it has been changed to some degree?

A Yes, sir.

Q Now, would you have an opinion -- I am going to show you the next page which blows up Bexar County. Now, this is 26, or Senator Bernal's District, down in the southeastern portion -- this which seems to be almost half the County is Senator Kethmann's district and this fringer area laying to the west in the county and coming to the north of the County and coming into the northeast part of the City proper, around Alamo Heights, Terrell Hills and this area, is proposed District 21. So, this area in Alamo Heights, Terrell Hills, would then be embodied with Starr, Jim Hagg --

A And others.

Q -- Zapata and Deval. Would you have an opinion, concerning the political trends of this

Cross - Gurns

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lower part of this district; are they traditionally
Republican or Democrat?

A I would say they are Democrat.

Q Would you state they are liberal
or conservative?

A Possibly more liberal.

Q Would you say --

A Possibly more liberal than conserva-
tive.

Q Do you know what the economy down
there is based on?

A Not really. I am not that familiar
with these particular counties to the south.

Q All right, sir. Would you have an
opinion -- pardon me -- as to whether or not there would
be a community of interest between the people in northeast
San Antonio and northern Bexar County and the people down
in Jim Wells, Zapata, Starr and Duval Counties?

A I don't think so.

Q You don't think they would have a
community of interest?

A (Witness shakes head)

Q Do you think that if a Senator
should be elected from, say, roughly the geographical

1 Cross - Garza

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2 center of this district as proposed, would you say that
3 he could easily represent the interest of the people in
4 the extreme southern portion of the district and the
5 people in Alamo Heights and Terrell Hills on certain
6 issues that might come before the Legislature?

7 A It would be difficult.

8 MR. EASON: Thank you, sir.

9
10 CROSS EXAMINATION

11
12 QUESTIONS BY MR. EASON:

13
14 Q Mr. Garza, my name is Earl Lema and
15 I represent Roy Orr, the State Chairman of the Democratic
16 Party.

17 A Yes, sir.

18 Q I would like to ask you, sir, from
19 the standpoint of practical politics, generally, in
20 getting people elected to the Legislature, City Council
21 or other office, regardless of ethnic background or
22 political party, which, in your opinion, is the most
23 important, one, having the support in the form of man-
24 power and financing of an effective political organization
25 such as the Good Government League, or, two, single

1 Cross - Gerns

640

2 number districts?

3 A There is no question about it, the
4 finances and the political support.

5 MR. LUNA: Thank you, sir.

6 MR. GEM: Your Honor, in view of
7 the shortness of the questioning, I wonder
8 if I might ask him --

9 JUDGE GOLDMEYER: Sure.

10 MR. GEM: One or two questions.

11 CROSS EXAMINATION

12 QUESTIONS BY MR. GEM:

13 Q Mr. Gerns, the statement was made
14 on your behalf by Mr. McDaniel, perhaps before you came
15 into the Courtroom, that as a matter of professional
16 philosophy you felt the single number districts were
17 preferable?

18 A Yes, sir.

19 Q That is correct, is it not?

20 A That is correct.

21 Q And, when you say you think a
22 single number district is preferable, that must mean you

1 Cross - Corza

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2 think it is preferable to the present at large or
3 multi-member district?

4 A That is correct. I don't think
5 this is going to solve the problem that we are seeking.
6 But, when we are talking about preferable between, one,
7 single member, two, multi-member district, there is no
8 question that the single member district is preferable.

9 Q Yes, sir.

10 A But, it doesn't solve the problem.

11 Q Excuse me. And, the distinction
12 that Mr. Luna seeks to make between the presence of the
13 Good Government League and the single member district,
14 there is no reason why you couldn't have the Good
15 Government League and the single member district, is
16 there?

17 A Not at all. I think that our
18 charter revision committee at this particular time is
19 looking into possibly single member district, or at least
20 taking part of the council elected by district and part
21 elected at large.

22 Q So, there is no -- those are not
23 choices in any sense, are they?

24 A But, as I understand his question,
25 he asked me whether I would prefer having the backing of

1 Cress - Garza

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2 a political party with money and financing and influence,
3 or a single member district, and the answer has to be a
4 relatively simple, "I would rather have the support",
5 because in being realistic about politics -- and I think
6 Mr. Ldar made this point -- money is what elects you in
7 most cases -- and influence and exposure. All these
8 combinations get you elected to office. What you do
9 after you are in office, of course, is --

10 Q Let's examine that just a moment,
11 Mr. Garza. These are the things that get you elected
12 to office if you have to run county-wide in a county the
13 size of Bexar County, isn't that right?

14 A Repeat that again?

15 Q Money, influence, financing, these
16 are the things which are extremely important if you are
17 going to run county-wide in the county?

18 A The larger the area, the more
19 finances you are going to have to have.

20 Q In fact, running at large in Bexar
21 County, effectively eliminates door to door campaigning
22 as a practical means -- at least taken by itself?

23 A I think door to door campaigning
24 has gone fore ever. Since the advent of television.

25 Q Well, do you think it would

Cross - Carza

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necessarily be gone forever in a single member district composed of approximately 74,000 people?

A I think you would probably communicate with people just as easily through some type of media, rather than having to go to parties and coffees, you know, the door to door type thing.

Q You think you can do it just as easily? As a matter of fact, you can do it probably easier --

A Easier.

Q -- if you have the funds to do it?

A That is right.

Q But, if you don't have the funds to do it, you can take the other route and go to the parties and knock on the doors, is that right?

A Right.

Q Your experience has been campaigning chiefly county-wide, hasn't it?

A City-wide.

Q City-wide? And, in your experience, is the financing, the money and so forth, which has been necessary?

A Yes, sir, that is correct.

Q But, you would agree with me that

Cross - Gurne

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in a single member district of a smaller size, they would not be as necessary or as indispensable as they are on the county-wide basis?

A: I would agree with you to the extent that it would not be as necessary, but this does not preclude it being there.

C. E. - Garza

Q Oh, money always helps.

A This is the reason I say that having single-member districts is not going to solve the problems that most of you are seeking here today.

Q Yes, sir. I am sure that it is not going to solve the problems, but you will agree with me that it would be a step toward solving it, wouldn't it?

A I don't think so, because I think you are dealing here with political philosophies and we are not talking about helping people; we are trying to solve the problem. The Mexican-American, the everyday problem, the one that I can identify with, single-member or multi-member is not really going to solve it. I think what you are solving is you are solving the problem of one man over another man having an advantage in a particular area, but this can be overcome simply by finances and some amount of prestige behind an individual.

Q But it sounds from the report that Mr. Ider quoted to you that finances are a pretty severe problem for the folks running from the barrio area. Wouldn't you agree?

A It always has been, but in the Good Government League, for example, I would say that maybe

C. E. - Garza

fifteen to twenty per cent of the money that is expended comes from the people that have businesses in that area.

Q All right, sir. Now, you have stated or it has been stated on your behalf that you do favor single-member district, however.

A Over the multi-member.

Q Yes, sir. What are the reasons why you favor the single-member districts?

A I think I just said it a while ago. It brings-- although you may not get the man that you want or any particular party you want in office, it does bring the-- it does bring government or that individual a little closer to the people and what it amounts to is, more citizens, direct citizen participation.

Q All right.

JUDGE WOOD: Mr. Garza, we have been over this over and over again. You are repeating. He has testified to all of this. Now go to something--

MR. GEE: --Very well, Your Honor.

JUDGE WOOD: He has testified to every bit of this. Go to something that--

Q In view of the Court's comment, I have just two more questions. In a given situation then,

1 C. E. - Garza

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2 unless there was some compelling reason for it, you
3 would-- for the other choice, you would choose the
4 single-member district over the multi-member district.

5 JUDGE WOOD: You have been over that,

6 Mr. Gee.

7 A I think I have answered that about four
8 times.

9 JUDGE WOOD: I think he has answered it
10 four times. Let's go on to something else.

11 Q All right. What is the reason then, sir,
12 why the multi-member district is preferable in Bexar
13 County?

14 A I just told you. I think that it has
15 more citizen participation, but it doesn't solve the
16 problems.

17 Q No, sir. My question is, why is the
18 reason why the multi-member district exists in Bexar
19 County?

20 A Why does it exist?

21 Q Yes, sir.

22 A I have no reason why it exists.

23 Q Can you think of no rational reason?

24 A I haven't ever really thought about it
25 other than I just grew up with it and it was there but

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2 I have no reason for it.

3 Q Thank you, sir.

4 JUDGE GOLDBERG: Anybody else? We will
5 take a ten minute recess.

6 MR. RICHARDS: Your Honor?

7 JUDGE GOLDBERG: Yes, Mr. Richards.

8 MR. RICHARDS: We have Counsel Allen
9 here. He couldn't make it down here yesterday.
10 He got weathered in in Dallas. I hate to
11 interrupt, but could we put him on after
12 the recess?

13 JUDGE GOLDBERG: Is that satisfactory
14 with everyone?

15 MR. RICHARDS: He will be very brief.

16 JUDGE GOLDBERG: We can't fight the
17 weather all the way so--

18 MR. IDAR: --Your Honor, I have another
19 witness who couldn't come up because of the
20 weather yesterday, so if it is all right, of
21 course with him, and if the Court will allow
22 me some leeway with this other one, that is
23 fine with me.

24 JUDGE GOLDBERG: Your witness is in the
25 city now?

MR. IDAR: Yes. He will be available.

JUDGE GOLDBERG: Fine. Let's take a ten minute recess.

(Whereupon there was a ten minute recess, after which the following proceedings were had.)

MR. IDAR: Your Honor, I was unaware of the fact that my next witness has a commitment and has to return to San Antonio as soon as he can. This is my next to last witness. I have already advised Mr. Richards of my circumstances, and he has agreed to withdraw his request to--

JUDGE GOLDBERG: --Proceed then.

CHARLES L. COTRELL,
a witness called by the Intervenor (Tyler case)
after having been first duly cautioned and
sworn to testify the truth, the whole truth
and nothing but the truth, testified as
follows:

D. E. Cotrell

DIRECT EXAMINATION

Questions by Mr. Idar:

Q Will you please state your name for the record?

A Charles L. Cotrell.

Q What is your occupation?

A I teach political science at St. Marys University.

Q Are you the head of any department there?

A Yes. I am Chairman of the Political Science Department.

Q Where are you from?

A I was born in San Antonio.

Q Can you give us some idea as to your academic background?

A I received a B.A. in political science from St. Marys University in 1938. I received a Ph.D. in the field of government from the University of Arizona.

Q Pardon me. At that point did you do any major area of work in connection with that particular degree?

A Yes. I did my dissertation which was

1 D. E. - Cotrell

2 written on American Elites

3 Q All right. Go ahead.

4 A I taught government at the University of
5 Arizona, Texas A & I University, Wesleyan University in
6 Connecticut and I have taught at St. Marys for the past
7 five years.

8 Q Have you done any work relating to the
9 voting behavior or voting-- any study of political
10 attitudes of voting behavior of the Mexican-American
11 population?

12 A Yes. For the past three years or four
13 years I have conducted survey research in the areas of
14 attitudes, voting behavior and specifically, ethnic
15 political behavior in Bexar County.

16 Q Okay. Is there any other work that you
17 have done or that students under your direction have
18 done in this field?

19 A I have supervised several Master's
20 theses, all dealing with either South Texas or Bexar
21 County ethnic political behavior.

22 Q All right. Doctor, you have been in the
23 courtroom for the last, I guess, all through yesterday
24 and today?

25 A (Indicated affirmatively)

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2 Q Pardon me. There is something else: Have
3 you done any work for any of the radio or television
4 stations in connection with voting?

5 A Yes. I did some election analysis for--
6 I believe radio station KONO several years past.

7 Q How about your students? Have they
8 conducted any voter profile studies?

9 A Yes. Almost semesterly since 1967, and
10 also attitude profiles and this was done on both the
11 graduate and undergraduate level.

12 Q How about in Arizona? Did you get
13 involved in any kind of statewide study in that state?

14 A I was fortunate there to take part in a
15 statewide study of the Democratic Party in the State
16 of Arizona.

17 Q Was it written work that--

18 A It was a written manuscript on the
19 Democratic Party in the Bureau of Governmental
20 Research at the University of Arizona.

21 Q One of the issues in this lawsuit relates
22 to your majority system of electing candidates like we
23 do in Texas where we have the place system; we have a
24 runoff election so that we be sure that everybody be
25 elected on the majority basis in the party primary, for

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2 example, and the plurality method. From your knowledge
3 of political science and political behavior and parti-
4 cularly if you can relate it to the Mexican-American in
5 Bexar County, would you give us your views on that
6 issue that is before the Court?

7 A. The question of representational schemes,
8 the question of ballot schemes and the question of
9 general election schemes has long been a subject for
10 the study of political scientists.

11 Beginning with political scientist Maurice
12 Duverger in the '50's and then continued in the 60's
13 by political scientists such as V. O. Key, I think one
14 could reach conclusions such as these about election
15 schemes, representational schemes and so on.

16 Duverger concluded after a very exhaustive
17 study-- his work was substantiated by V. O. Key, and
18 I think that there is data to substantiate this in
19 Bexar County-- that the plurality system encourages
20 both recruitment and election of more diverse factions
21 than does the majority system as a ballot system.

22 Duverger found that, in fact, the two ballot
23 system, that is, that a majority ballot with a runoff,
24 was the kind of system which least encourages both the
25 recruitment-- and I think that is an important issue here--

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2 the recruitment and the election of candidates to office.

3 In Bexar County I believe that that would be
4 borne out by this fact. From the period 1960 to 1970,
5 in the recruitment stage, and I hope that the Court
6 would consider this a vital part of the electoral process--
7 the recruitment of candidates-- only twenty-two of a
8 hundred and thirty-three, in a hundred and thirty-three
9 races in a democratic primary, only twenty-two of those
10 were entered by Mexican-Americans at the state legislative
11 level in the Democratic primary, bearing out the Key-
12 Duverger thesis showing that certain kinds of represen-
13 tational systems and so on discriminate against diverse
14 factions.

15 Q Of course, actually we do not have a
16 plurality system in Texas, do we?

17 A That's true.

18 Q We have the system whereby a candidate
19 has to announce for a place, say in the party primary,
20 and if he does not get a majority vote in the first
21 primary he has to go into a runoff with the next highest
22 candidate. Do you have any views as to how the control
23 of a political party operates under both of these systems
24 that we are talking about, plurality versus majority vote--
25 party control?

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2 A Well, if you are-- your question relates
3 to Bexar County and to Texas. Of course our-- there is
4 no real party control in the state in Bexar County, at
5 least, in the state legislative races. There is no
6 control concerning the recruitment of candidates and so
7 on.

8 Q For example, is there any formalized
9 procedure whereby the Democratic Party in Bexar County
10 would go about slating candidates for a Democratic
11 Party primary election?

12 A Your question concerns party control.
13 No. I would describe the process of recruitment or
14 reelection of candidates in Bexar County as informal and
15 almost anarchic.

16 JUDGE GOLDBERG: Do you think that this
17 is an issue in this case?

18 MR. IDAR: Well, Your Honor--

19 JUDGE GOLDBERG: --I am interested and
20 have a great intellectual interest, but I just
21 wonder what the pertinence is. Maybe you can
22 help me.

23 MR. IDAR: Well, there is one sentence
24 in the Chavis case where the Supreme Court, in
25 effect, stated that in short, we are unprepared

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2 to hold that in an election conducted on a
3 plurality vote basis, such a system would be
4 unconstitutional.

5 What I have in mind, Your Honor, is a
6 key distinction between a plurality type vote
7 and a majority, because in a plurality type
8 vote, if you have five vacant places with
9 twenty candidates, the five highest would
10 have an opportunity to get in.

11 JUDGE GOLDBERG: I don't argue with this,
12 Mr. Idar, but Judge Marlan, in his concurring
13 opinion, of course, referred to the fact that
14 the majority apparently is committed to the
15 majoritarianism in this country, and he is
16 still bellowing against it in the concurring
17 opinion, but I don't want to-- I see no reason
18 to regurgitate it because however you read the
19 majority opinion in Chavis, we are still under
20 the majority system. Now there may be repre-
21 sentation and proportional voting in hundreds
22 of other variations. It is very interesting,
23 but is it germane to what we have got to
24 decide here today?

25 MR. IDAR: Well, if the Court feels we

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2 already have enough on the record to draw the
3 distinction and the effect of the plurality
4 vote versus the majority vote, but I still
5 feel, Your Honor, that despite what Judge
6 Harlan said in his dissent, I am very much
7 intrigued by that one sentence that the
8 Supreme Court referred to, because in Indiana
9 they follow the plurality system, and in
10 effect have party control where the party
11 selects the candidates and--

12 JUDGE GOLDBERG: --All right. Judge
13 Justice says he wants to hear some more about
14 it. So go right ahead.

15 MR. IDAR: All right, sir.

16 Q Where were we?

17 A Mr. Idar, may I say this to the Judge,
18 through you? One of my-- one of the very important
19 issues in this case, it seems to me concerns the de-
20 fination of elections and then discriminatory effect
21 and intent in that process. And it would be my
22 contention or my opinion that the recruitment process
23 is an equally vital part of the election process and
24 that in Bexar County, at least the 200,000 people in
25 this twenty-seven tract region that you have outlined

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2 on this board here, have been discriminated against in
3 both recruitment and election of public officials.

4 Q Let me go on to something else then. Do
5 you see any key distinguishing factors between the
6 multi-member district and the single-member concept of
7 legislative representation?

8 A Well, there are some very obvious ones.
9 The single-member district, drawing on an ancient American
10 tradition of a small scale government, a small scale
11 district, enhances the principles of visibility of the
12 candidate, responsibility in a legal sense of the
13 candidate, and then the candidate's capacity to be
14 responsive. That is, in the case of Bexar County, it
15 takes no great mind to see that a candidate is more
16 visible, responsible and can be more responsive to
17 74,000 people than to 830,000 people.

18 Q Do you draw a distinction between-- or
19 do you draw a distinction between a member of the
20 legislature-- talking about his relationship within the
21 legislature itself, in contrast to his relationship
22 back home with his people?

23 A Most certainly. Proponents of the multi-
24 member district system have suggested that there is
25 a greater legislative efficiency that is derived from that.

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2 That is, the so-called pendulum affect of legislative
3 influence. I would only say that legislators in the--
4 are not responsible to other legislators, but are
5 responsible to the groups of people-- geographically
6 defined groups of people and the smaller those groups,
7 the more effective the legislator can represent the
8 people.
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2 BY MR. IDAR:

3 Q What about this idea that a member of a multi-
4 member legislative delegation is, in effect, a member of a
5 team that can respond based to the needs of the over-all
6 community versus the idea of his representing one small
7 apportion of that community? Does there necessarily have
8 to be any conflict as between those two concepts under a
9 single member district theory?

10 A As I have set through testimony in this
11 courtroom this past two days, I have heard it said time
12 and again, logically, I might add, on a logical basis -- I
13 have heard it said time and again that if a single member
14 district system were adopted, that the county itself would
15 suffer, because there would be no necessary cohesion in
16 the legislative delegation, and, Mr. Idar, I find that
17 very hard to believe. I find it hard to believe that in
18 Bexar County, for example, if we had a single member dis-
19 trict system, that our delegation could not come to grips
20 and could not unify and consolidate to gain such things
21 as the University of Texas at San Antonio, to gain such
22 things as a dental school, a medical school and so on.

23 I would say, however, if we did have a
24 single member district system in Bexar County, quite
25 possibly these installations, these great prizes of the

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2 legislative process, may have been more equitably dis-
3 tributed in location throughout the county.

4 Q You have referred to the University of
5 Texas at San Antonio, the medical school and, as I under-
6 stand, a dental school that is also already approved by
7 the Legislature.

8 Would you go over to this map and indicate
9 to the Court the general area in the city where these
10 three major installations would be located, some of them
11 already having been, the medical school in particular?

12
13 (REPORTER'S NOTE: Witness complies.)

14
15 A These are quadrant---.

16 Q I'm talking about the medical school, the
17 University of Texas at San Antonio and the proposed dental
18 school.

19 A The Bexar County Medical School here (indi-
20 cating), northwest quadrant; the University of Texas at
21 San Antonio roughly in here (indicating), northeastern; the
22 dental school, Mr. Idar, I am not familiar with. I am not
23 sure where that is going to be placed.

24 Q I might add that these were issues in
25 contention, many people contending that they should -- or

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one of these installations should be placed in the southern part of the city.

Q All right.

A Or the southwestern or eastern part of the city.

Q Do we not have also a major Highway Department complex in that area, too?

A It is -- I guess I would describe it as slightly northwest.

Q All right.

A In the city. I don't think I could---

Q I am just talking about the general area. I don't want you to take the time to find the street and all that.

Now, as far as the medical school, is it not true that as a result of this particular medical school being located there, that the county also constructed what we call the Bexar County Hospital adjacent to the medical school?

A That's true.

Q And all of these, aside from the county hospital -- I mean the other installations were a result of the action by the Texas Legislature in the last three or four years?

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2 A That is true.

3 Q Do you know of any major installation of
4 any type that the Legislature has appropriated or has
5 approved, even if not yet appropriated funds -- that would
6 be located in any portion of San Antonio, if you were to
7 draw a line from west to east, dividing the city between
8 north and south -- is there anything in the entire southern
9 portion of the city?

10 A Do you mean recently?

11 Q Yes.

12 A To my knowledge, no.

13 Q You don't, I suppose, have any idea as to
14 the value of the installations that we have been speaking
15 of in dollars and cents? Do you have any idea how much---?

16 A I wouldn't venture a guess on the physical
17 value, no.

18 Q Now, I might as well get your views at this
19 point, because I am sure if I do not, the Court will want
20 to know them.

21 What will be the factors or the components
22 that you would consider if you were to be assigned the
23 task of drafting a redistricting plan particularly -- well,
24 confining ourselves to just Bexar County.

25 A I would use the standards that the districts

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1 be compact, contiguous, equal in -- roughly equal in
2 population in as small as possible deviations, that also --
3 and I want to be very careful here in the way I phrase
4 this -- that recognizable communities of interest become
5 operative informal criteria for the Legislative Redistrict-
6 ing team, although I realize that the communities of inter-
7 est, such as, most importantly, such as economics and
8 ethnicity, cannot be codified or made uniformly applicable,
9 I would go so far as to say, Mr. Idar, if a single member
10 district system were adopted along the lines of these
11 criteria, that one could randomly start in Bexar County
12 drawing up compact, contiguous, equal districts which
13 would insure effective representation, randomly start, and
14 you would have a system which would insure from both
15 recruitment to elections a more equal opportunity for
16 ethnic minority groups, Mexican-Americans and blacks, and
17 any other area, wherever else it might be, and also minority
18 political parties, such as the Republican Party in Bexar
19 County.
20

21 Q Would there be any need to torture your
22 lines or to gerrymander in order to insure that a particular
23 group would have a fair chance at electing somebody?

24 A In Bexar County if these criteria were
25 employed in a single member district system, I would venture

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2 a guess that it would not be necessary to draw salamanders,
3 lizards and other fantasy animals for districts.

4 However, in some rare cases it might be --
5 it might be a possibility that elongated districts or
6 something which deviates slightly from the compact criterion,
7 would have to be drawn to insure a community of
8 interest.

9 Indeed, with the legacy of discrimination,
10 minimization, cancellization that the Plaintiffs are attempting
11 to demonstrate in this case, it would seem to me that
12 any group that has as their task redistricting would look
13 at this legacy and respond accordingly, but I don't believe
14 in most cases tortuous districts would be necessary.

15 JUDGE WOOD: Have you attempted to
16 draw such a plan to meet the elements you
17 told us about?

18 THE WITNESS: Presently?

19 JUDGE WOOD: Do you have a plan to show
20 the Court that would meet all of these requirements?
21

22 THE WITNESS: I am aware that a plan
23 exists, and I am not sufficiently familiar
24 with the lines, that is, to go up on the
25 map and show you exactly what the results

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2 would be and where the lines would be drawn.

3 I am aware that a plan does exist, Your Honor.

4 MR. IDAR: May I advise the Court, Your
5 Honor, that Mr. Richards and the other people
6 in the Dallas case have been working on a plan.
7 Dr. Cotrell was not used for that purpose and
8 has not been requested to work it out.

9
10 BY MR. IDAR:

11 Q Another thing that has been running through
12 the testimony in this case that I would like to get your
13 views on -- are we dealing here when we are talking about
14 multimember versus single member districts, is this strictly
15 a liberal versus conservative fight in your estimation?

16 A Certainly not; certainly not. I know this
17 issue was introduced. The notion involved in the single
18 member district is an equitable opportunity, a more equitable,
19 much more equitable opportunity in the recruitment
20 and election process for various communities of interest
21 to be represented, not that it would favor liberal or
22 conservatives, indeed, not that it would favor brown over
23 black, black over white interests, but merely to insure a
24 more equitable chance for these groups, which I think have
25 been invidiously discriminated against.

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Q Bearing in mind the single member versus multimember district concepts again, would you care to comment, or rather, I would like to ask for your comment or your views on the dictum or whatever you want to call it that that government is best that is closest to the people.

A Very briefly, I tried to talk about this Jeffersonian norm earlier in terms of scale, and quite obviously, single member districts incorporate the principle of scale, that is, smaller size much more effectively than a multimember district can do.

This notion was born out of Thomas Jefferson's political philosophy, that is, that the government which was most distant was the one to be most mistrusted, because citizens could not have the necessary face-to-face contact, the necessary participation, the necessary day-to-day awareness of what their officials were doing.

Q Did you hear Dr. McClesky refer to the rules of the game being crystallized in Texas as far as the black population during the first half of the century when the blacks were fairly well frozen out through the system that was adopted? Do you recall that aspect of his testimony?

A Yes, I do.

Q Would that be true as to the Mexican-Americans?

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2 A Most certainly, at least, in Bexar County
3 that is my experience. I think that there is evidence to
4 substantiate this.

5 Let me repeat, in the recruitment process
6 no more than 22 Mexican-Americans out of a total number of
7 races of 133 have ventured forth for state legislative
8 offices by means of the Democratic Primary from the period
9 1960 to 1970.

10 More importantly, only four Mexican-Americans
11 have been elected to office in that state delegation from
12 the period 1960 to 1970, and if we count Bob Vale, a per-
13 sonal acquaintance of mine, a man whom I have supported
14 both financially and politically, if we count him -- well,
15 some would not count him, because he does not identify
16 ethnically with the community nor economically with the
17 west side, and they don't, I don't believe, identify with
18 him that closely.

19 Q What about this concept of Dr. McClesky's
20 about permanent majorities and permanent minorities? What
21 are your views on that in relation to the Mexican-Americans?

22 A Well, I attempted to make the case through
23 statistics. Very simply, 208,000 people in that 27-tract
24 area that is in orange there (indicating) and the 6.8
25 percent or probably higher percent of San Antonio which is

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black, or the east side of San Antonio, those people are effectively over long periods of time have effectively been frozen. They have become perpetual minorities. They have been disfranchised effectively.

Their 200,000 votes, or their votes, rather, for the 200,000 people simply don't count in legislative races, which is, I understand, the issue at Court.

Q Do you feel that we have a growing problem relating -- as far as the Mexican is concerned, do you feel we have a growing problem of inter-group relations between them and the Anglo-American population in Bexar County?

A My surveys have demonstrated, along with a volume of other literature, beginning with Ralph Gorman-Joan Moore's "the Mexican-American People," many other studies have demonstrated a growing polarization, a tendency to stereotype, a tendency to write off whole stratas of the population and attribute certain kinds of typecast opinions to them and behavior to them.

Also my studies have demonstrated in Bexar County, at least, a growing alienation, particularly among the young and more important and, I think, a great issue before this Court, a growing cynicism with the political processes which young Mexican-Americans have increasingly begun calling Anglo-dominated, Anglo political procedures

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2 used specifically to disfranchise them, to prevent them
3 from effectively and fairly taking part in the political
4 processes.

5 Q Would adoption of a single member district
6 for the Texas House of Representatives in Bexar County in
7 your view help or hinder doing away with this polarization
8 that is taking place?

9 A I think your choice of the word "help" is
10 really important here. Yes, it would help. By no means
11 no fool would say -- no one would say that this is going
12 to completely resolve the issue. It would help to this
13 degree, that both actually and psychologically people in
14 these districts, single member districts, would have the
15 opportunity to choose the people who they would like to
16 represent them, liberal, conservative, Mexican-Americans,
17 black, Republican, Democrat or whatever, and this question
18 of self-determination and preference seems to me to be
19 a keystone of the demands of young Mexican-Americans and
20 young blacks and other ethnic minorities in this country.

21 Q What about this concept that because the
22 Anglo-American and the Mexican-American are equal in numbers
23 in Bexar County that if applied to the Mexican-American as
24 a group it is equal therefore in every other respect to the
25 Anglo-American, but specifically in representation in the

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2 Legislature?

3 A Frankly, Mr. Idar, I was shocked at the
4 naivete of that kind of question when it was initially
5 asked. All voting behavior data that I know of in this
6 country and certainly, the kinds of data that we have
7 gathered in Bexar County, demonstrates that numbers don't
8 tell the entire story here.

9 Of course, there is a generally equal pro-
10 portionate population among the Anglo and Mexican-Americans,
11 roughly equal. It has been debated about that percentage
12 actually for years, but a number of factors would enter
13 in that would effectively disfranchise the Mexican-American.

14 In his case, his cultural heritage and his
15 language can sometimes act as an obstacle in understanding
16 what seems to him to be very complex political procedures.

17 Q And what about the concept of community of
18 interest? How do we define that in your view? What do you
19 have in mind when you say that these districts should be
20 drawn with community of interest in mind, or is that a
21 factor at all? I don't know if I asked you that earlier.

22 A Well, I think it is very important, a very
23 important factor, and we couldn't simply in a rather glib
24 way respond and say that, "Well, community of interest is
25 some sort of vague abstract notion." I am speaking

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essentially of two very key constants in American politics and Bexar County politics.

I am speaking of economics, and I am speaking of ethnicity or ethnic group interests, and, in part, these are self-defined. The people living in that tract know that they are of Mexican heritage. They know what it means to live there, and they also coincidentally are very poor. Black Americans, the same could be said for them.

When we speak of economic interests, of course, operationally it becomes a tough question, but certainly, if one were drawing up counties in South Texas or districts in South Texas, one would take into consideration the peculiar economic plight of the migrant farm worker, or if one were drawing up districts in Northeastern San Antonio, one would take into account the rather high income level that supposedly is distributed in that area, so it would vary with situations.

(No omission here.)

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2 Questions by Mr. Idar:

3
4 Q What about this other idea, that under a
5 multi-district situation you can probably remedy the
6 entire problem by merely requiring that the ten or eleven
7 people from that area reside in the ten or eleven
8 different subdistricts within the multi-district; would
9 that resolve the issue completely?

10 A Well, you mean whether or not there was
11 a residency requirement inside the multi-- stipulation
12 in the--

13 Q They would still be running at large but
14 they would be required to reside-- If they wanted to
15 announce for Place 1, for example, in a ten member
16 delegation of Bexar County, they would have to be
17 located in a certain geographical area designated for
18 Place 1 but they would still run countywide.

19 A Perhaps I didn't convey to you the full
20 meaning or flavor of representational theory in the
21 single-member district-- the old
22 No, it wouldn't solve the issue. It would help. It
23 wouldn't resolve the issue, though, because the legis-
24 lature would still be responsible to 330,000 people--
25 this rather vague and moribund group-- as opposed to a

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2 homogeneous 74,000-- or at least a more recognisable
3 geographical group.

4 Q Well, the legislator that resides in
5 Bexar County and responsive to a district comprising
6 only 74,000 people, would the reverse be true? Is he
7 in such a bind there that he is not able to work with
8 other members of the same Bexar County delegation for
9 certain objectives that they want to achieve in the
10 legislature? I believe you answered that but I want to
11 be sure you--

12 A Yes. As I said, I think that is a false
13 issue, the fact that people from single-member districts
14 could not conjoin and unify in support of certain
15 countywide programs simply has not been proven.

16 Q Now, when we are talking about redistricting,
17 how many groups are we talking about? How far should we
18 go down in considering groups; do we have to worry about
19 the Catholics and Protestants and all these other people
20 that have been cropping up in this case?

21 A I mentioned two groups, or two bases,
22 economics and ethnicity. And, I mentioned those because
23 they are proven to be constants in politics since the time
24 of Aristotle. Indeed, when Mr. Roy Barrera and Mr.
25 Gilbert Garza were in this witness box they implicitly

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2 recognized, when one of them criticized the senatorial
3 district which goes from south to north, he criticized
4 it because of the extremely diverse economic interest
5 in that district. So, these are constants which any
6 politician takes into account-- the ethnic factor in
7 setting up tickets has been mentioned time and again in
8 this courtroom. So, I speak of two identifiable
9 communities of interest. I didn't speak to religion
10 because Bexar County is not known as an island and it
11 doesn't seem to be that dominant or salient an issue in
12 politics in the surveys that we have taken. I don't
13 believe that you would find politics pitched on religious
14 grounds that much elsewhere.

15 Q In your view is there any other significant
16 item of information crucial to the issues before this
17 Court that I might have overlooked that you feel the
18 Court should be made aware of?

19 MR. LUMA: If it please the Court, I
20 think we object to a general dissertation.

21 JUDGE GOLDBERG: Well, we will listen to
22 anything that the witness can give us that will
23 enlighten us, because we sure need it.
24
25

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2 BY MR. IDAR:

3
4 Q All right.

5
6 A Just this: if a single-member district
7 system were adopted and the general criteria which I
8 have suggested here to you were adopted, compactness,
9 contiguous districts and equal districts, one that takes
10 into account identifiable communities of interest and
11 one which would start-- you would start drawing the
12 districts in a random way, I feel that the Mexican-
13 American population of San Antonio, and particularly
14 in that identifiable twenty-seven tract area, would
15 receive two and possible three representatives. It is
16 not stable whether they now, at the state legislative
17 level, have any. The Black population of San Antonio
18 would stand to gain one, maybe two. The Republican
19 Party, a minority party, would stand to gain one, maybe
20 two-- all of which would be better than what we have
21 now, which is nothing.

22 MR. IDAR: Thank you. Pass the witness.

23 MR. EASON: I have no questions.

24 MR. LUNA: I have no questions of this
25 witness.

MR. McDANIEL: We have no questions.

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2 MR. CURRY: We have no questions.

3 JUDGE JUSTICE: I have one or two
4 questions, if I may.

5 QUESTIONS BY JUDGE JUSTICE:

6
7 Q According to certain language in Whitcum
8 versus Chavis-- Now, we see nothing in the findings of
9 the District Court indicating recurring poor performance
10 by Marion County's delegation with respect to center
11 township ghetto, nothing to show what the ghetto's
12 interests were, and, in particular, legislative situa-
13 tions, and nothing to indicate that the outcome would
14 have been any different if the twenty-three assemblymen
15 had been chosen from single-member districts. Now,
16 aside from the absence of certain public buildings,
17 hospitals and that kind of thing in the barrio area of
18 San Antonio, can you point to any other failures on the
19 part of the legislative delegation from Bexar County
20 insofar as its protection of this particular minority's
21 interests are concerned?

22 A I didn't mean to, Your Honor, to slight
23 that hospital question. You notice that it was a question
24 of location, and I was suggesting that if a more equitable
25 representation on the delegation had existed at the time

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2 it become law and the time these decisions were made
3 that some of these vitally important health care
4 facilities would have been located in more reasonably
5 approachable places inside the county. Also, although
6 I don't think it is purely an ethnic question, certainly
7 taxation schemes, certainly the administration of health
8 care--

9 Q You say "taxation schemes". What are you
10 referring to?

11 A I am referring to sales tax and regressive
12 taxation schemes versus income tax or other kind of more
13 progressive schemes on both the city and state level.
14 More importantly, there are a number of bills, I
15 understand, before the Texas Legislature now concerning
16 health care. And, I couldn't in this short time
17 impress the Court with the kind of really tricky
18 ethnic and economic questions which arise in the adminis-
19 tration formulation of health care programs. To my
20 knowledge Joe Bernal, Senator Joe Bernal, is one of
21 the few who is taking this group-- this twenty-seven
22 tract area-- and possibly the east side included--
23 their interest at stake concerning health maintenance
24 organizations at the state level. What you ask for,
25 Your Honor, however would have to be concluded by a

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very exhaustive roll call analysis in the legislature.

2 And, given the haste with which I prepared for this I
3 wasn't able to undertake a roll call analysis. One
4 other thing, Your Honor, the Chavis part that you
5 quoted suggests actual political benefits. Let me
6 suggest one other benefit; if not having dollars and
7 cents and practical program value that has deep meaning
8 in this country, and that is the question of symbolic
9 representation, balancing what I would call actual
10 representation. These people need representative with
11 whom they can psychologically identify. No one would
12 contend that the Bexar County delegation, now or in the
13 past, has been constituted thusly.

14 JUDGE JUSTICE: Thank you, sir.

15 QUESTIONS BY JUDGE GOLDBERG:

16
17 Q I understood, aside from your objection
18 to the reptilian configuration involved in the senatorial
19 district down there, I understood you to say that you
20 would "Commence randomly". I don't quite understand
21 what you mean by "randomly". Would you take Bexar
22 County and have someone blindfolded and then go and
23 pick a point on a map and move from there? What do
24 you mean by "random"? Or would you put a whole bunch
25 of numbers, census tract numbers in a hat and pick one

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2 out and start from there?

3 A I think the device-- You know, the
4 statistical meaning of "random".

5 Q Yes.

6 A All right. The device you would employ
7 could be either one. It could be the one the Selective
8 Service uses in terms of census tract drawings or it
9 could be, really, the pin the tail on the legislative
10 district system-- it would vary. But, I would say
11 "random" because I am convinced whatever scheme you would
12 use-- I don't care if you go back to the old Greek
13 system-- whatever scheme you would use, if you had single
14 member districts as the basis and you followed the cri-
15 teria which I am suggesting you would encourage the
16 fair representation of these groups we are speaking of,
17 which I suggest have been permanently frozen out of
18 the electoral process. I couldn't think of a more
19 fair way than random election through probability. If
20 you allowed someone to start, let's say, the senior
21 member of the Bexar County delegation, a friend of mine,
22 let him start. I am sure he would start with certain
23 things in mind and he would, for example, start at the
24 southern end of the county making certain that people
25 with all of the interests he wanted taken care of would

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2 then be taken care of at that end of the county. But,
3 this way you would begin, as it were, in a random way
4 and work out concentrically around, keeping in mind
5 compactness, contiguous nature of the district, the
6 equal nature of the district. And, because there is
7 no ideal compact norm you would also take into account,
8 as a normal factor, informal criterion, these two vital
9 communities of interest. But, I know they would be
10 taken care of.

11 JUDGE GOLDBERG: All right.

12 MR. EASON: In view of the last question
13 and answer I would like to ask the professor
14 a question.

15 CROSS EXAMINATION

16 Questions by Mr. Eason:

17
18 Q Now, the remarks you have just made
19 concerning random picking of precincts, you are speaking
20 strictly of single-member districts in a metropolitan
21 area, am I correct in this?

22 A It was all under the assumption that
23 we had a single-member precinct, yes.

24 Q Yes, sir. And, your reptilian or
25 salamander thing-- you were speaking more of the

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2 senatorial district, were you not, as proposed by the
3 Board?

4 A Well, I think in testimony this morning
5 that one of those districts, the one stretching from
6 south to north, the old Wayne Connally district, has
7 been described as one of a reptilian nature.

8 Q But the two things don't have any
9 correlation in your analysis of this thing, do they?
10 By that I mean-- I suppose I am correct-- the reptilian
11 concept which would take in the northeast San Antonio
12 and northern Bexar County and go clear down to Starr,
13 Jim Hogg and Duval and so forth, you are not expressing
14 an opinion based on your expertise that this would be
15 acceptable from your random drawing of precincts
16 generally? What I am trying to do is differentiate--
17 You are saying that the random drawing of the precinct
18 would be confined to single-member districts in
19 metropolitan areas?

20 A I am addressing myself to the state
21 legislative-- Lower House and the single-member
22 district scheme there. I am not necessarily addressing
23 myself to the senatorial districts. I would have to
24 rethink the question. I would maybe introduce another
25 criteria with that senatorial district, and that is the

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2 homogeneous character of the district. For example,
3 you are including-- and this is what Mr. Barrera was
4 upset about-- you are including rural and urban and
5 that is really stretching a point.

6 JUDGE WOOD: How do you avoid this if
7 you follow the one man-one vote rule always?

8 A You can't always avoid it. You can merely
9 minimize it.

10 JUDGE GOLDBERG: But, in your community
11 of interest maybe Starr and Zapata and some
12 of those counties have a lot in common to
13 some of the areas in San Antonio.

14 A I would contend that Starr, Zavala,
15 Hidalgo, LaSalle counties do not have as rural, heavily
16 dominated Mexican-American counties do not have as much
17 in common as urban San Antonio.

18 JUDGE GOLDBERG: Even the barrio section?
19 The ethnicity you would completely disavow?

20 A Not at all. But, the rural expressions
21 of ethnicity, as even used in the William Watson
22 demonstration, rural expressions of ethnicity are
23 very different from urban expressions of ethnicity, as
24 in the cases of Los Angeles and San Antonio demonstrate.
25 So, I was addressing myself to the lower House and the

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2 senatorial districts. I might have to rethink. But, I
3 think that homogeneous criteria I would include.

4 JUDGE GOLDBERG: Thank you.

5 MR. RICHARDS: Is it possible--

6 MR. IDAR: We will let him proceed now.

7 JUDGE JUSTICE: Call your witness.

8
9 GEORGE ALLEN,

10 a witness called by the Plaintiff, after having
11 been first duly cautioned and sworn to testify
12 the truth, the whole truth and nothing but the
13 truth, testified as follows:

14
15 DIRECT EXAMINATION

16 Questions by Mr. Richards:

17
18 Q Could you give us your full name, please,
19 sir?

20 A George Louis Allen.

21 Q Where do you live, Mr. Allen?

22 A At 2230 Hatcher, Dallas.

23 Q And how long have you lived in Dallas?

24 A About thirty years.

25 Q You are presently a member of the Dallas

1 D. E. - Allen

2 City Council?

3 A I am.

4 Q What is your business, Mr. Allen?

5 A Beg your pardon?

6 Q What is your business?

7 A I am a public accountant.

8 Q How long have you been on the City
9 Council?

10 A This is my third year.

11 JUDGE JUSTICE: Would you speak up a
12 little louder?

13 MR. RICHARDS: Pull the mike up there.

14 A They usually charge me with talking too
15 loud.

16 BY MR. RICHARDS:

17
18 Q When you initially went on the City
19 Council were you elected or appointed?

20 A I was appointed when they increased the
21 size of the council from nine to eleven places.

22 Q And, have you subsequently been elected
23 to the council?

24 A Yes, twice.

25 Q Was that part of what is known as the

1 D. E. - Allen

2 Citizens' Charter Association slates?

3 A That is right.

4 Q Are you acquainted in Dallas with what
5 has been identified here as the Democratic Committee
6 for Responsible Government?

7 A Yes, I am.

8 Q Is the Citizens' Charter Association to
9 city politics essentially what the DCRG is to county
10 politics?

11 A I would think so.

12 Q It has been testified that the Democratic
13 Committee for Responsible Government in Dallas dominates
14 the Democratic primary nomination of state legislative
15 candidates. Do you agree with that view?

16 A Yes.

17 Q To your knowledge-- to the best of your
18 knowledge-- how long has the Dallas Committee for
19 Responsible Government been in existence functioning
20 in Dallas?

21 A Well--

22 Q Roughly.

23 A Well, I have known the name about five
24 or six years, but frankly the same people are involved
25 in the organization, to my knowledge, over the last

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2 twenty-five or thirty years have been handling Democratic
3 politics in Dallas County.

4 Q Are you saying, then, that a predecessor
5 to the DCEG, in the sense of perhaps under another name,
6 has dominated the Democratic primary in Dallas County
7 for the last twenty years or so?

8 A I don't know that there is another name,
9 but the people primarily are the same.

10 Q All right. Based on your observation
11 over... How long have you been involved in politics in
12 Dallas County?

13 A About twenty-eight of the thirty years.

14 Q All right. Based on your observations
15 of those years, to what extent does the Black community
16 of Dallas County participate in the legislative
17 candidate selection process of the Democratic Committee
18 for Responsible Government?

19 A In the selection process I would say
20 none.

21 Q By that I mean the creation of their
22 slate.

23 A I would say none.

24 Q In your opinion, does the use of county-
25 wide legislative districts in Dallas County operate to

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2 minimize the voting strength of the Black citizens of
3 Dallas County?

4 A There is no question in my mind about
5 that at all. Yes.

6 Q Why do you say that?

7 A Well, if you have got no power of
8 selection-- if you can play no part in the selection
9 process-- then you have no way of helping to choose the
10 people who will represent you. And, I am not talking
11 about the Black people only, I am talking about the
12 people whom the Black community would vote to represent
13 them.

14 Q Be they Black or White?

15 A That is right.
16
17
18
19
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24
25

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2 Q And you are saying, as you see it
3 now, that the Black community of Dallas has no role to
4 play in the slate-making ballot by the B.C.R.G.?

5 A I certainly do say that.

6 Q How did it come to pass, Mr. Allen,
7 that you and Dr. Conrad and Reverend Holmes intervened
8 in this litigation?

9 A Well, we tried to get a hearing
10 before the State Legislative Redistricting Board. We filed
11 telegrams, asked to get heard, we got no response at all.
12 We wired and called the Lieutenant Governor direct. We
13 did the same with the Attorney General. We finally got
14 to talk to one of the assistants in the Attorney General's
15 office and he indicated to me that if I sent a statement
16 down, he would see to it that it get in the record. I
17 am not in a position to indicate whether this got into the
18 record or not, but I presume it did. However, when the
19 Board -- we felt reasonably sure that the board would come
20 up with single member districts. We have had what we
21 thought was reasonable assurance from certain members of
22 the Board. But when they came up with that large district,
23 Zan Holmes and Hamit Conrad and I decided that maybe it
24 would be the propitious time to convene a meeting with
25 all of the Black elected officials of Dallas County and

1 Direct - Allan

2 the 43 elected precinct chairman.

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3 Q The Democratic Precinct Chairmen?

4 A Yes. Well, all of the precinct
5 chairmen.

6 Q There are 43 Democratic Chairmen?

7 A There are 43 Democrats, but there
8 were two Republican Chairmen that were Black, too, and
9 also the Black members of the School Board of --

10 Q -- Wilmer Hutchins?

11 A Wilmer Hutchins, right. We put
12 the question to the assembled group, what action should
13 we take? We had the nine Black lawyers of Dallas, of the
14 City of Dallas present. It was their thinking that we
15 ought to attack all three of the redistricting lines --
16 the Congressional District lines; the State Senatorial
17 District lines, which really just -- it threw us out
18 completely, because we had one district, the old Mike
19 McCool District, where there were 54 percent Blacks in
20 it and they changed the line -- drew a line right through
21 the District and put half of us in the new Mike McCool
22 District and now we constitute about 31 percent and put
23 the other half into the new district, embracing Ellis
24 County, which gave us about 33 percent of that district.
25 So it is physically impossible to elect a Black State

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2 Senator from Dallas. At any rate, --

3 Q -- try to concentrate your --

4 A -- I am sorry. Well, that kind of
5 upset us. That, and the Legislative Districts. The group
6 testified -- I mean, they adopted a resolution that we
7 should proceed with filing these lawsuits. Well, of
8 course, the cost, et cetera, involved, we later decided
9 that it may be less expensive if we intervened in this
10 suit.

11 Q All right. Did this intervention
12 on your part represent the will of --

13 A -- it was unanimous, if that is
14 what you mean, yes.

15 Q Yes. And one further question:
16 why, from your observation, is this matter of county-
17 wide Legislative Districts a matter of such concern to
18 the Black community of Dallas?

19 A Well, as I stated earlier, we have
20 never had a role to play in the selection process and you
21 just have an exercise in futility when you permit it to
22 vote -- we haven't been voting that long anyhow, but when
23 you are permitted to vote in the primary, but you have
24 nothing to say about who you are voting for, and then
25 come November, it is meaningless. But we still vote.

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2 Q And is it your observation that
3 this matter of single member/multi-member districts is
4 a matter of concern to the entire Black community?

5 A Of immediate concern, and urgent
6 concern, and a great concern.

7 Q Thank you, sir.

8
9 CROSS EXAMINATION

10
11 QUESTIONS BY MR. STEELE:

12
13 MR. STEELE: May it please the
14 Court, I am Cleo Steele.

15 Q Mr. Allen, do I understand you
16 ran on the slate last election? Is that right?

17 A That's right.

18 Q And were elected to the City
19 Council?

20 A Yes, sir.

21 Q Would you describe the outcome of
22 the voting when you won?

23 A When I won?

24 Q Yes. The number of votes you got
25 as opposed to others.

Cross - Allen

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A Well, in 1969 I got about 28,000+ plus votes, and in '71, about 53,000.

Q About 53,000?

A Yes.

Q Now, who had the most seniority on the council when you were reelected?

A I had most seniority than any other C.C.A. member.

Q Okay. And based on historical practices, as far as the City Council goes, there in Dallas, what was the practice for electing the Mayor pro tem?

A Well, the Mayor pro tem for the three -- part of three terms that I had served, the Mayor pro tem was selected as a result of the number of votes he received, the geographical district from which he ran -- usually a person would have to live in a neutral position to that of the residential requirements of the Mayor. Thirdly, his tenure was taken into consideration if he had the longest period of service on the Council and if he met those -- the majority of these three criteria, he was usually selected Mayor pro tem.

Q Okay. Following these practices, which historically have been the method of selecting

1 Cross - Allen

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2 a Mayor pro tem, who should have been the Mayor pro tem
3 at the time you were reelected?

4 A Well, I was promised the Mayor
5 pro tem's position by seven of the council members, prior
6 to the organization of the council.

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2 Q And ordinarily following those practices
3 you just sat out, then you would have been selected
4 mayor pro-tem? Is that not correct?

5 A I met more of the criteria than any other
6 council, if that is what you mean.

7 Q Were you elected mayor pro-tem?

8 A I think it is-- no, I wasn't.

9 Q Who was?

10 A City Councilman Ted Holland.

11 Q All right. Prior to your re-election to
12 the City Council, how many races had you won?

13 A I ran two unsuccessful races; one in
14 '63 and one in '65.

15 Q Did you run as a member of the team?

16 A No. I ran as an independent.

17 Q And the results were?

18 A I polled about 18,000 votes the first
19 time and-- I am sorry-- I polled a little over 11,000
20 the first time and 18,000 the second time. But I was
21 an "also ran" both times.

22 Q When you ran as a member of the team you
23 won and both occasions when you ran not a part of the
24 team, you lost.

25 A Handsomely.

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2 Q What sort of costs did you incur as a
3 result of running and not a member of the team?
4

5 A The first time, I don't recall too well.
6 Maybe \$5,500.00 or \$6,000.00. The second time, almost
7 \$10,000.00. I borrowed \$9,300.00 from one source.

8 Q And you just recently repaid those debts?
9 Right?

10 A Yes. Three months ago, to be exact.

11 Q Prior to your re-election as city
12 councilman, do you know of any other Blacks that had
13 run for and been successful in getting a seat on the
14 city council?

15 A I knew of several Blacks who made the
16 race from time to time, but none were actually elected.

17 Q Had any of those been a part of the team?

18 A No.

19 Q Okay. I think that we have introduced,
20 prior to your testimony today, certain maps to the
21 Court showing concentrated areas of Blacks in what is
22 known as South Dallas. And we have also introduced
23 evidence as to certain housing patterns in the Black
24 community. In relation to the school situation in
25 Dallas County, how do you think-- well, first let me
ask you, in light of the 1954 Supreme Court decision to

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2 desegregate schools, do you think, and based on your own
3 opinion now as a city official that 1970, the Dallas
4 schools were integrated-- adequately integrated?

5 A Well, I don't-- "Adequately integrated?"
6 I believe that the housing patterns being what they are
7 in Dallas, they would-- to integrate all the schools, I
8 think the criteria was any school ninety per cent or more
9 of one race was not an integrated school. I would think
10 that there would have to be massive bussing, as there is,
11 and of course we have got some 7,000 Black kids that are
12 being bussed right now. I don't know that that would be
13 adequate. I don't believe I am qualified really to-- I
14 don't know too much about the school operation. I think
15 I have got so much in the city's business I have to look
16 after that I hesitate to pre-empt the school board in
17 their responsibilities.

18 Q All right. Have you had an opportunity to
19 talk to Blacks in Dallas County, Texas who may or may not
20 be in official influential positions about this matter
21 of multi-member districts as opposed to single-member
22 districts in the selection of county officials?

23 A Many times.

24 Q And state officials?

25 A Many times.

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2 Q What were the views and the sentiment
3 of the people with whom you spoke?

4 A Well, they were principally of one view,
5 that we will never be able to truly select somebody to
6 represent the Black community in these elective office
7 unless we are able to participate actively in this
8 selection process and that one way we can be assured of
9 participation, and that is in single-member districts.

10 Q Okay. Did you not meet with certain
11 Black precinct chairmen concerning this matter?

12 A I didn't hear you?

13 Q Did you meet with Black precinct chairmen--

14 A --Yes.

15 MR. RICHARDS: -- We have got that in.

16 MR. STEEL: I am sorry.

17 Q Okay. Going briefly here just a little
18 bit further into discriminatory practices in Dallas,
19 are you familiar-- or can you tell the Court about the
20 city policies there in the recent past regarding
21 ambulance services as relates to ambulances picking up
22 Blacks and ambulances picking up Whites and this sort
23 of thing?

24 A Well, counsel, I don't know that it is
25 a city policy, but up until maybe three or four years

1 C. A. - Allen

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2 ago Black funeral homes, Black-owned funeral homes who
3 had emergency ambulance service in Dallas were-- I don't
4 know whether it was by contract or what, but they were
5 not permitted to pick up anyone but Black injured cases.
6 By the same token, White-owned ambulance-- emergency
7 ambulance companies did not pick up Blacks and-- but
8 lately-- I mean the last three or four years this has
9 changed. White ambulances will pick up, at time, Blacks.
10 I don't know about the Blacks picking up the Whites, but
11 I do know that there is one notable exception and that
12 is of the Hamilton Park area which is an area in North
13 Dallas right off of North Central Expressway in far north
14 Dallas. There is a pocket of Blacks and I don't know
15 how many families live there, but it is considerable.
16 Whenever they get a call for an injured case or a heart
17 attack or what have you, the prime contractor which is
18 Sparkland-Hillcrest Funeral Home, they dispatch the call
19 to the Black and Clark Funeral Home which is a Black-
20 owned funeral home-- well, they have got two locations;
21 one in southeast Oak Cliff and one in near downtown
22 Dallas on Washington Avenue near Ross, and this ambulance--
23 an ambulance is dispatched from one of those two locations
24 to go all of the way across town to this little north
25 Dallas pocket to get this person and get him over to the

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hospital. Which Sparkland-Hillcrest has its main head-
quarters just a stone's throw away on the northwest
highway, away from this location. And they could dispatch
an ambulance in a matter of two to three minutes at a
maximum and many times we feel-- we have indicated that
this may be the difference between life and death in a
heart attack victim or somebody that has been smashed
up in an automobile accident.

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2 BY MR. STEELE:

3 Q O. K., and---.

4 A We are trying to change that.

5 Q In relation to the State Fair of Texas there
6 in Dallas, would you give us a brief description, as you
7 understand it, of what was until recently known as Negro
8 Day?

9 A Well, that was an ugly blot on Dallas for
10 a long, long time. The State Fair of Texas had a two-week
11 to maybe a 16-day affair that is pretty well known, pretty
12 well publicized and a great fair. It is supposed to be
13 the largest in the United States, but only one day out
14 of this period could blacks be admitted to the grounds of
15 the State Fair, and this even included going into the
16 State exhibits and Federal exhibits, et cetera, but this
17 has changed, of course.

18 Q O. K., and can you state whether or not on
19 the Grand Jury there in Dallas there has ever been more
20 than one black serving at any one particular time?

21 A Not to my knowledge, no.

22 Q Would you state whether or not at any one
23 time there has been more than one black running for State
24 Legislature, City Council or School Board on the ticket, on
25 the team, as we call it?

1 CE - Allen

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2 A Well, there has been only -- there have
3 been only two times that the C.C.A. has put a black on its
4 ticket, and I was that black both times. That was once
5 in '69 and the other in '71.

6 Q All right. And would you state whether or
7 not matters pertaining to blacks and the black community
8 are constantly referred to you as the black member of the
9 team on the City Council?

10 A You mean by other members of the City
11 Council?

12 A Yes, by members of the Council and in
13 general.

14 A Oh, I would say yes, indeed.

15 Q O. K., and do you think that this in any
16 way burdens you as a City Councilman?

17 A Well, I don't feel that it burdens me. I
18 felt that my election placed that responsibility on me
19 probably more than on any other Council member, because
20 the blacks look to me for articulating their problems
21 and their needs, which were peculiar to the black community,
22 to the rest of the Council and hopefully interpret them
23 to them and try to get a resolution of the matter, so --
24 but I believe I could be more relevant and responsive to
25 a smaller group in a smaller location, rather than to

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2 200,000-plus blacks that are all over the city, the majority
3 of whom are in the Southeast and South Dallas area.

4 MR. STEELE: Thank you. I have no
5 further questions, Your Honor.

6 MR. HERNANDEZ: Frank Hernandez. I just
7 have about three questions, Councilman Allen.

8
9 CROSS-EXAMINATION

10
11 BY MR. HERNANDEZ:

12
13 Q You know Mrs. Alfred Anita Martinez, do
14 you not?

15 A Yes. She is a Council woman.

16 Q On the Dallas City Council?

17 A That is right.

18 Q And she was listed and endorsed by the
19 Citizens Charter Association also?

20 A That is right.

21 Q And did she get approximately the same
22 number of votes as all C.C.A. candidates did?

23 A Oh, yes.

24 Q And you know that she lives in far North
25 Dallas?

1 CE - Allen

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2 A That's right.

3 Q Would you describe that as a ghetto area
4 or a barrio area?

5 A No, no, that's the silk stocking area of
6 Dallas, the affluent area.

7 MR. HERNANDEZ: Thank you.

8 JUDGE GOLDBERG: Mr. Luna?

9 MR. LUNA: I'm Earl Luna, representing
10 Roy Orr, State Democratic Chairman.

11
12 CROSS-EXAMINATION

13
14 BY MR. LUNA:

15
16 Q Mr. Allen, you have talked about a good
17 many changes that you have seen in Dallas County that
18 affect the black community.

19 Would it be fair to say that you in your
20 capacity as a Councilman have been most effective and
21 instrumental in getting a lot of these changes made in
22 favor of the needs of the black community?

23 A I have tried hard, Mr. Luna.

24 Q As a matter of fact, you have recently, maybe
25 not so recently, sponsored, but recently been successful in

1 CE - Allen

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2 passing through the Dallas City Council for the first time
3 in its history what is known as a Fair Housing Ordinance,
4 have you not, sir?

5 A That is right.

6 Q Now, by Fair Housing Ordinance we are talk-
7 ing about the terms that it means generally, open housing?

8 A That is right.

9 Q And you are elected in the City of Dallas
10 at large, are you not?

11 A That is true.

12 Q Mr. Allen, as a member of the Council
13 haven't you been very instrumental in planning to get a
14 million and a half dollars worth of federal funds for
15 flood control in a black area, which is highly subject to
16 flooding, known as Roosevelt Heights?

17 A Well, a million and a half dollars total
18 outlay, but half of it the city will put up in matching
19 funds, \$750,000.00 from the Federal Government, yes.

20 Q That is an area where we have heavy rains
21 and it floods, and we have to—.

22 A Back up from the Trinity River waters, yes,
23 have to evacuate the people.

24 Q Now, would it be fair to say that that need
25 and that isolated instance is a need of the predominantly

1 CH - Allan

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2 black community? In other words, blacks mainly live in
3 Roosevelt Heights, do they not?

4 A That is true, but I would go further than
5 that. I would say that this is a humane thing.

6 Q Yes.

7 A That I believe the people of Dallas would
8 respond to, no matter what the color is, and it just happened
9 that these people are black.

10 Q That comes to my next question. Therefore,
11 the white members of the City Council have worked with
12 you to help reach that goal, which, as you say, the
13 people that will be helped just happen to be black?

14 A The Council members have worked with me,
15 a majority of them have worked with me on many real vital
16 issues where Dallas is concerned, but I think, Mr. Luna,
17 you are well aware of the many, many times I am voted down
18 ten to one, too, on issues that we consider very vital to
19 the black community, too.

20 Q And, of course, other Councilmen are some-
21 times voted down ten to one, are they not?

22 A I don't remember but one time when one of
23 them was, and that was the Mayor. I really don't remember
24 any other time.

25 (LAUGHTER)

1 CE - Allen

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2 A Maybe eight to three or six to five, really.

3 Q Do you have an independent on there that
4 has been voted down once or twice?

5 A There's only two independents on the Council,
6 and frankly, one of them -- well, one of them is the Mayor,
7 but the other one, Councilman Jessie Price, is rarely voted
8 down. I don't know whether he is a good salesman or what,
9 but he gets the support of the rest of the Council.

10 Q In the case of schools, we do have in
11 Dallas County what is known as the University of Texas
12 at Dallas, do we not?

13 A Right.

14 Q That is a university that was created by
15 the Legislature session before last, right?

16 A That is true.

17 Q Regular session before last.

18 A Regular session before last.

19 Q But it does not have the first two grades.
20 Is that right?

21 A That's right.

22 Q Now, Dallas County in senatorial districts
23 is broken up into single member districts, is it not?

24 A Right, single member senatorial districts,
25 right.

1 CE - Allen

7-8

2 Q Now, when a politician wants to vote
3 against a particular measure, he can always come up with
4 a good reason to do it, if he is a good politician, can't
5 he?

6 A That's what I hear, yes, sir.

7 Q Now, I want to ask you whether or not at the
8 last session of the Legislature at least one of the members
9 of the State Senate who is elected wholly within Dallas
10 County did not oppose the bill to add the other two grades
11 to the University of Texas at Dallas, that being a senator
12 in whose district the University of Texas was not.

13 A Well, what is the question? I mean---.

14 Q Did he vote against it?

15 A I don't know. I really don't.

16 Q You don't know?

17 A No, I don't know.

18 Q You know or did know in his lifetime the
19 late Joe Lockridge, did you not?

20 A Oh, yes.

21 Q Mr. Allen, do you know how Joe Lockridge
22 was selected to run for the Legislature, in the first
23 place?

24 A Well, I am going to have to speculate on
25 that, if you want me to.

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Q You do not know? I thought maybe you knew and were a part of it.

A Well, I was a part of the group who sat around the table at the Moorland Y.M.C.A. to come up with a name—.

REPORTER: What Y.M.C.A.?

THE WITNESS: Moorland, N-o-o-r-l-a-n-d.

A ---to come up with a name, and frankly, I urged Ian Holmes to let us put his name forward, and Ian held us up a week while he, I guess, talked with his church people, and he came back and said he just couldn't do it, and the Rev. S. M. Wright, whom we both know, came up with Joe Lockridge's name, and very frankly, I didn't know Joe Lockridge at the time, and I had been in Dallas a long time, and there weren't a lot of Negro lawyers there, so I felt that I should have known him, and we threw the question around, "Who is Joe Lockridge?"

"Well, this is Rev. Lockridge's son."

Well, we had all heard of Rev. Lockridge, because he pastored one of the larger of the Baptist churches there for years, but I am told that Joe was selected, frankly, by our downtown friends and—.

(LAUGHTER)

A ---well, this is what I was told, and that

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2 it was suggested to Rev. Wright to sell him to us, and
3 frankly, I was so glad to get a black on what I knew was
4 going to be a winning ticket that I bought it.

5 Q So you recommended him to be a part of
6 the team, didn't you?

7 A Well, I didn't recommend him, but, at least,
8 I agreed, "It is all right. Go on with him."

9 (LAUGHTER)

10 Q Yes. Does Rev. Sam Holmes effectively
11 represent the interests of the black community?

12 A Oh, I think so; I think so.

13 Q Even though he is not elected from a single
14 member district, you still think he effectively represents
15 the black interests?

16 A Well, Sam Holmes is the kind of man that I
17 think the whole black community would select as one of its
18 leaders to represent them, if we have the choice of deter-
19 mining who should represent us.

20 Q And in your case where, as you said, you
21 attempt to articulate the causes of the black community,
22 you would do the same thing whether you were elected in
23 a multimember district or a single member district, would
24 you not?

25 A Oh, yes, I feel that is my responsibility.

CE - Allen

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Q You have indicated that you favor single member districts of the Legislature?

A I do.

Q And is that based on your desires from a Legislative standpoint that you think it simply, regardless of constitutional grounds, you think it would be better?

A Oh, yes, I think it would be far better. I think one person can more adequately represent a smaller group and be accountable to a smaller group whose problems are pretty much common and uniform than he can a multi group of people with all kinds of varying problems.

Q You mentioned a black senator earlier. We have never had one in Dallas County, have we?

A No.

Q Although it was divided up from an entire county district to single member district, we still didn't get a black?

A No, and we didn't have the political sophistication either until recently.

Q Mr. Allen, in the race where you were elected, the last race--.

A Uh-huh.

Q --isn't it true that in contested races you led the ticket?

1 CE - Allen

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2 A That is right.

3 Q And isn't it also true that taking the
4 ticket as a whole, Anita Martinez led the ticket?

5 A Well, she was unopposed. She couldn't have
6 gotten more votes, but she led us by less than a hundred
7 votes, and she was unopposed.

8 Q She is Mexican-American, is she not?

9 A Yes, very beautiful woman.

10 (LAUGHTER)

11 A I mean it helps.

12 (LAUGHTER)

13 Q Which, in your opinion, is the most impor-
14 tant in electing black members to office, Legislature or
15 otherwise, to have the -- which of these two in your opinion
16 is the most important, (1) to have the support of an effec-
17 tive organization with both manpower and funds to help or
18 (2) have individual districts?

19 A Well, in the first place, with all the man-
20 power and resources that the established group has that
21 has been financing these campaigns, making the selections
22 and financing the campaigns in getting them elected, I
23 think this still smacks of paternalism, and in my community
24 we are a heck of a lot more sensitive to that than probably
25 anywhere else in the city or in the county, and if I could

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2 have my druthers, I would rather have the single member
3 districts where people can assert themselves, and, as I
4 say, a lot of the leaders that many of the blacks would
5 select are not necessarily blacks, because we recognize
6 that there are people with particular expertise in specific
7 areas, and they are not black people, but I want to have
8 the voice in saying whom I shall select to represent me,
9 and this is the feeling of the black community.

10 MR. LIMA: Thank you very much, Mr.

11 Allen.

12 THE WITNESS: You are welcome.

13 JUDGE GOLDBERG: Any other questions?

14 MR. CUNNINGHAM: May it please the

15 Court.

16
17 CROSS-EXAMINATION

18
19 BY MR. CUNNINGHAM:

20
21 Q E. Brice Cunningham. I think I have just
22 a few questions for you, Mr. Allen.

23 A Thank you, Mr. Cunningham.

24 Q What is the composition -- how many people
25 comprise the City Council of Dallas?

CE - Allen

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A. Eleven.

Q. Has it always been 117

A. It was nine for many years.

Q. And when was it changed from nine to eleven?

A. 1968, November.

Q. And two places were added then?

A. That is right.

Q. Was one of the two places added to the City Council designated as a black place?

A. Well, it was Place 8, and 97 percent of the population of Place 8 is black.

Q. And this was designated as the position for a black?

A. That is true.

MR. CUMMINGS: Thank you, Mr. Allen.

JUDGE GOLDNER: Any other questions?

MR. RICHARDS: No questions.

JUDGE JUSTICE: You may stand down.

THE WITNESS: Thank you very much, sir.

(WITNESS STANDS ASIDE.)

JUDGE JUSTICE: I have been requested to make an inquiry.

How many more witnesses do the Mexican-

CH Allen

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American group have?

MR. IDAR: I just have one more on my main presentation, Your Honor, with the possibility of one rebuttal witness after the State finishes putting on its case.

JUDGE JUSTICE: Is this one witness that you have an expert witness or is it a fact witness, or what are the circumstances?

MR. IDAR: This is a witness relating to Dallas County, Your Honor. We have not been able to get a Mexican-American witness from Dallas, and he will be testifying, hopefully, not very long.

JUDGE JUSTICE: Well, we want to hear the case, but we are just trying to get an idea of how long it will take.

Now, following the close of the Mexican-American's case we will then, in turn, get to the case of the Republicans. How many witnesses are we facing here?

MR. CROUCH: Your Honor, we had talked about five. However, in view of the length of the trial, we are trying, and I hope during the lunch hour to be able to cut that down to

three.

JUDGE JUSTICE: Are these expert witnesses or fact witnesses in the main or both?

MR. CROUCH: Well, both.

JUDGE WOOD: How long will it take to present them, Mr. Crouch?

MR. CROUCH: Well, I said yesterday, Your Honor, that I thought we could present our direct case in two hours. I intend to do it in a shorter time than that, if possible.

JUDGE JUSTICE: Yes, sir?

MR. EASON: I am sort of fish and fowl. On the San Antonio Republican Senatorial, I will probably have one witness, Your Honor.

JUDGE JUSTICE: Only one? Will it be an expert witness or will it be a fact witness?

MR. EASON: No, sir, it will not.

JUDGE JUSTICE: Thank you.

Now, insofar as the case for the State is concerned, and I am including here the interests of the State Democratic Executive Committee, would you give me an estimate as to the length of the -- how many witnesses and how long it will take?

1 MR. LUMA: On the Dallas phase of the 747
2 case, Your Honor, we expect to offer three
3 witnesses on the stand and then the deposi-
4 tion of two others. We don't anticipate--.

5 JUDGE JUSTICE: These witnesses that you
6 are going to put on the stand, are they expert
7 witnesses?

8 MR. LUMA: One is, two are not.

9 JUDGE WOOD: How long will they take,
10 Mr. Luma?

11 MR. LUMA: I think that we can put on
12 our direct with all three of the witnesses --
13 it will take roughly 15 minutes apiece to put
14 on our direct.

15 MR. CURRY: Your Honor, our present
16 planning is to conclude ours through deposi-
17 tions, and we intend to summarize them.

18 JUDGE JUSTICE: About how many such
19 depositions do you have?

20 MR. CURRY: About six or seven.

21 JUDGE JUSTICE: Are they of the length
22 of Lt. Governor Barnes' deposition?

23 MR. CURRY: No, sir, he exceeded every-
24 body's depositions.

25 (LAUGHTER)

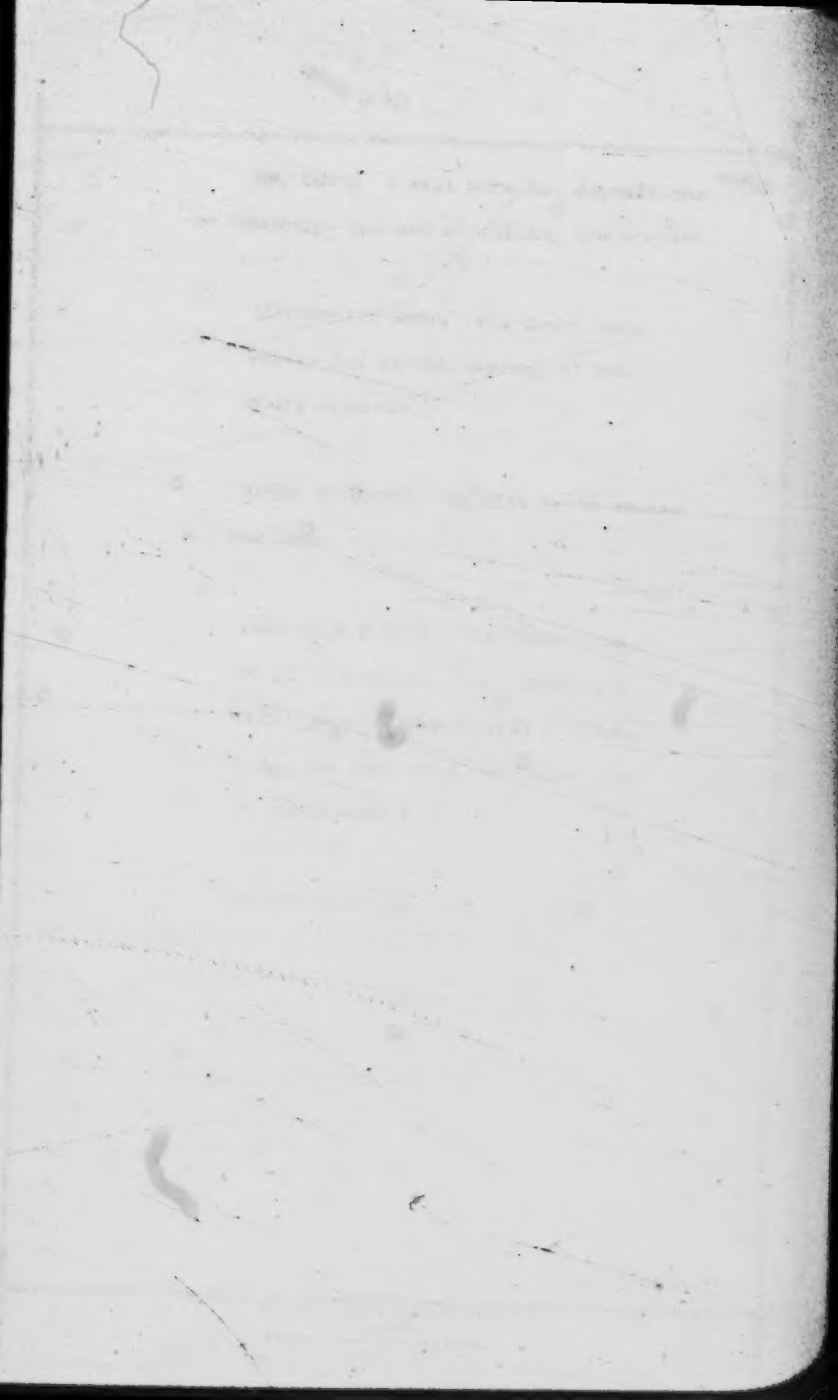
1 MR. LUNA: I will have two depositions 718
2 to summarize instead of calling the witness.
3

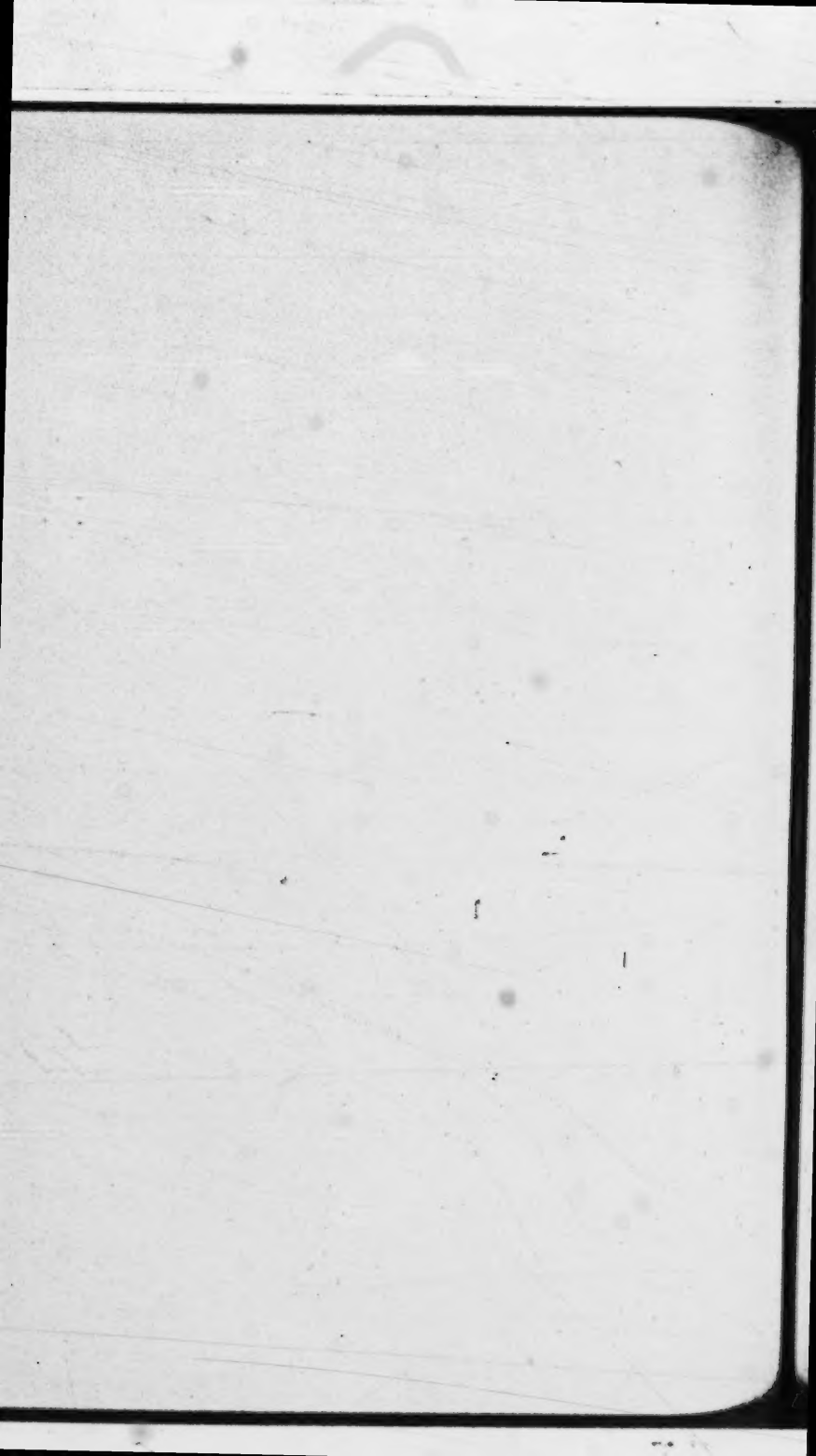
4 (REPORTER'S NOTE: The Court here
5 confer out of the hearing of the
6 court reporter.)
7

8 JUDGE GOLDBERG: We will be in recess
9 for one hour.
10

11 (REPORTER'S NOTE: The Court then,
12 at 12:42 o'clock, P.M., January 5,
13 1972, recessed until 1:42 o'clock,
14 P.M., the same date, at which time
15 it reconvened.)
16

17 (No omission here.)
18
19
20
21
22
23
24
25





1 Direct - Martinez

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2 (Court resumed at 1:40
3 o'clock P.M., after which
4 the following proceedings
5 were had).

6 JUDGE JUSTICE: I believe you had
7 one more witness?

8 MR. IDAR: Yes, Your Honor. Mr.
9 Hernandez will put this witness on.

10
11 RENE VILLA SAMA MARTINEZ.

12
13 a witness called on behalf of the Interveners (Tyler case)
14 after having been duly cautioned and sworn to testify the
15 truth, the whole truth and nothing but the truth, testified
16 as follows:

17
18 DIRECT EXAMINATION

19
20 QUESTIONS BY MR. HERNANDEZ:

21 Q Will you state your full name,
22 please?

23 A Rene Villa Sama Martinez.

24 Q And where do you live, please?

25 A Dallas, Texas.

Direct - Martinez

EXHIBIT - 10720

Q What is your name? What do you do in Dallas?

A My name is GENE FISHER.

JUDGE JUSTICE: Would you speak just a little louder, please, sir?

A Yes, sir.

Q How long have you lived in Dallas?

A 25 years. All my life.

Q You are 25 years old?

A Yes, sir.

Q Where were you born? In what part of the City?

A Little Mexico Village.

Q Would you describe what Little Mexico Village is?

A It is predominantly Mexican-American neighborhood.

Q Now, where were you educated at?

Would you give us some of your personal background briefly, in terms of your education, both your elementary and secondary and college and your community involvement and your employment?

A I was educated in elementary school, junior high school and high school in the Dallas Independent School District. I then attended Southern

Direct - Martinez

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Methodist University and received my Bachelor -- my
B.A. Degree in History, Spanish and Latin-American Culture.
I then was employed by the University for a summer and
after that I was employed by the Dallas Community Relations
Commission and I was the Assistant Director there and also
the supervisor of the VISTA program in Dallas.

Q All right. How are you employed today?

A I am the Assistant State Coordinator of
Children's Television Workshop, producers of Sesame Street
and Electric Company.

Q For the State of Texas?

A State of Texas, right.

Q You are based out of Dallas?

A Correct.

Q All right. In your employment and
community involvement, would it be a fair statement to say
that you have occasion to meet with the Black and Mexican-
American and white-American leaders of the community?

A Yes. In my employment with the Dallas
Community Relations Commission, that was one of my specific
responsibilities.

Q Without going into all of your community
involvement, what would you consider to be the most
important community service that you are performing now.

Direct - Martinez

EXHIBIT - 722

for Dallas? I am currently the vice-chairman of the board appointed Tri-School Committee, appointed by District Judge William M. Taylor.

Q: That is for the Dallas Independent School District?

A: Monitoring the desegregation of the Dallas Independent School District.

Q: And were you one of the original tri-chairmen appointed by Judge Taylor?

A: I am the vice-chairman right now, and I will be the chairman next year.

Q: Now, I know there has been some testimony in reading the record in terms of the discrimination that exists in Dallas toward the Black Americans, and I would ask you if you have an opinion in terms of the discrimination that exists towards the Mexican-Americans?

A: Toward Mexican-Americans, it exists in all levels, similarly as with the Blacks; employment and housing, administration of justice, judicial situation, and in all areas.

Q: Would that include education?

A: Education, especially.

Q: And how about in terms of the City?

1 Direct - Martinez

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2 employment, Police force, Fire Department, et cetera?

3 A Up until recently we had only nine
4 Mexican-American policemen in Dallas. As of now we only
5 have one Mexican-Fireman in Dallas. So they are not
6 represented.

7 Q All right. Now, in terms of the Dallas
8 County Grand Jury, do you think there is any discrimina-
9 tion toward Mexican-Americans in the Grand Jury system?

10 A Definitely, yes. For the past 30 years,
11 there has only been five Mexican-Americans to serve on
12 the Grand Jury and there have only been two Mexican-Ameri-
13 cans that have been Jury Commissioners.

14 Q All right. And is there any correlation
15 between the number of Mexican-American Grand Juror
16 Commissioners and the number of Mexican-Americans that
17 have actually served on the Grand Jury?

18 A Well, the only time that any Mexican-
19 American served on the Grand Jury was a specific incidence
20 where a Mexican-American was a Jury Commissioner.

21 Q Now, have you ever served on a Grand
22 Jury?

23 A No, I have not.

24 Q Have you ever been selected or -- by a
25 Jury Commission to serve on a Grand Jury?

1 Direct - Martinez

2 A Yes, I was.

3 Q And why? Was there any particular
4 reason why you did not serve?

5 A I was stricken off.

6 Q And when you say "stricken off", what
7 do you mean you were stricken off?

8 A I was listed as one of the top 12 in
9 the Grand Jury list and the Judge removed me from that
10 spot and put me in a lower number.

11 Q And the Judge you are referring to is
12 a District Judge of Dallas County?

13 A Right.

14 Q Any particular reason why you were
15 stricken?

16 A His criteria for removing me was that
17 I was too controversial and too young.

18 Q And how old were you at that time?

19 A 24.

20 Q Do you know of any District Court
21 Judges in Dallas County who are Mexican-American, or
22 with Spanish surname?

23 A No.

24 Q Do you know of any County Court
25 Judges who are Mexican-American or with Spanish surname?

Direct - Martinez

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A No, I do not.

Q Do you know of any City Court Judges of the City of Dallas who are Mexican-Americans or have Spanish surnames?

A Corporation Court Judge - one.

Q Yes. And who would that be?

A Judge Juarez.

Q How long, if you know, has he been a Judge?

A Less than a year.

Q And is he a full-time or part-time Judge?

A I think he is a full-time Judge, sir.

Q Now, do you know any Justice of the Peace that are Mexican-Americans?

A No, I do not.

Q Do you know any member of the Dallas City Council that are Mexican-American?

A Yes, I do.

Q And how many would that be?

A One.

Q And how many members of the council?

A 11.

Q Now, do you know any Mexican-Americans that are on the various Boards, Commissions, appointed

Direct - Mortimer

positions of the City of Dallas?

A There are approximately 6.

Q Out of the entire City of Dallas?

A Right.

Q Now, have these appointments come about recently, or are they of longstanding?

A They are very recent.

Q Now, is there any discrimination, in your opinion, in terms of the education of the Mexican-American in Dallas County?

A Yes, sir.

Q And where would this be evidenced at?

A Retention levels of Mexican-American children in schools, dropout rates, hiring practices, of personnel in the schools, and quite a few other areas.

Q Did the Dallas School District case have any specific provisions for Mexican-Americans?

A Yes.

Q And just briefly recite for the Court the three positions that the Court ordered specifically created for Mexican-Americans.

A Well, I think the most important thing in the Court Order was that District Judge William Taylor recognized Mexican-Americans as being a separate minority

Direct - Martinez

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group, identifiable minority group, and in his Court Order he acknowledged the fact that the bilingual program was beneficial for the Mexican-American and he ordered the school district to hire three top Mexican-American administrators for the D.I.S.D. -- the Dallas Independent School District.

Q Were they, in your opinion, -- was there some racially identifiable school comprised with the Court Order?

A Yes.

Q And would that be Pinkston, Crozier Tech, A.P. Allen, and William B. Travis?

A These are a few, yes.

Direct - Martinez

Q Some of these schools, were they greatly identifiable as Black-American schools or as Mexican-American Schools, or as both?

A Both. There are elementary schools that are identifiable by 95 percent or more Mexican-Americans and then there are some junior high and high schools that are 90 percent or more minority, which means black or brown.

Q Now, I want to ask you some questions about the population makeup of the Mexican-American in the City and the County of Dallas, and ask you to describe for me -- I have here what is on the board -- what has been marked as Exhibit 143, and this is a map of Dallas County. The orange areas here, the record will show, are those areas that are predominantly Black-American. Now, I would ask you -- 143-2 is the exhibit number. Now, if you would, describe for me where the Mexican-American in Dallas County resides.

A The Mexican-American, or Chicano population in Dallas is scattered throughout the City. There are some identifiable pockets of Mexican-Americans that are geographically isolated throughout the City. One of these is where I grew up, which is called "El Barrio", or Little Mexican Village, which is in north

1 Direct - Martinez

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2 Dallas -- Short North Dallas area.

3 Q Now, what streets would that entail in
4 terms of the little Mexico area?

5 A The Little Mexico area is different to
6 what El Barrio is. El Barrio is the area all around
7 and includes Little Mexico -- Little Mexico Village, or
8 the project areas -- the housing project areas, and that
9 is on Harry Hines and Wolf Streets.

10 Q Would that be that area described here
11 between these two predominantly Black areas?

12 A Yes.

13 Q And has the Mexican-American moved up
14 Harry Hines Boulevard and up toward the Love Field area?

15 A That is the northward expansion. They
16 have also moved south into Oak Cliff and east into Short
17 North Dallas, and East Dallas.

18 Q All right. Now, when you talk about
19 East Dallas, which streets or what part of the City would
20 that be in?

21 A I am talking about the streets that
22 run parallel into Ross Avenue; Park, Carnell, San Jacinto
23 -- there are a lot of streets.

24 Q Would that be the area that I am
25 pointing to here, as far as Precinct 313, and is it

Direct - Martinez

730

contiguous to the Black area that has been designated here?

A Yes, it is.

Q Are there any other areas or pockets where the Mexican-American lives in Dallas County?

A The largest pockets are in West Dallas; Precincts 411, 416, 417 and 415, I think. The lower area, which is called "La Bajada Barrio", that is off Kennedy Drive and Silbiv. And then the extreme area, Precinct 411, which is Lakewood, that is the other area and there is another area called "Los Altos", which is right next to La Bajada.

Q That would be right in this area? (Indicating)?

A Right.

Q Now, these are three areas, Los Altos, La Bajada and Lakewood areas, these areas are contiguous to what has been marked in the Black area here? Is that right?

A Right, they are -- they surround a Black area -- a large Black area, which is the center part of West Dallas.

Q Now, would it be a fair statement to say that throughout this Black area here in West Dallas,

1 Direct - Martinez

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2 There are some Mexican Americans who live within the
3 Black neighborhood?

4 A Intermittently there are two other small
5 Barrios within the Black area. One is in the housing
6 project, Elmer Scott, and there is another very small
7 Barrio called "La Estrella".

8 Q Now, are you familiar with the project
9 called "Colonia Tepayac"?

10 A That is an extreme Ledbetter area --
11 Ledbetter-Eagle Court area, which is near the Loop 12
12 area.

13 Q And Colonia Tepayac is a 280 unit multi-
14 family project? Is that correct?

15 A Yes. Predominantly Mexican-American.

16 Q Predominantly Mexican-American? And
17 now the federally funded project in the Little Mexico
18 area, is that predominantly Mexican-American?

19 A It is over 95 percent Mexican-American.

20 Q Now, are you familiar with Grand Prairie,
21 Texas, which is in the far part of Dallas County?

22 A A little bit, yes, sir.

23 Q Are you familiar with an organization
24 known as "LURAC"?

25 A Yes. They have a similar project to

1 Direct - Martinez

2 Colonia Tepayas, which is called "LULAC Village". Which
3 is found in Grand Prairie.

4 Q All right. Now, do you know what the
5 makeup of that project is?

6 A It is predominantly Mexican-American.

7 Q And is there any Mexican-Americans that
8 live in the area which is adjacent or close to this
9 particular Grand Prairie area known as Oakwell Hill?

10 A Yes, it is mixed.

11 Q Now, do you have or have you studied
12 any census population figures for 1970 pertaining to
13 the Mexican-Americans in Dallas County?

14 A There are no figures through the census
15 that relate to the Mexican-Americans. I can only project
16 and use speculation on the number of Mexican-Americans
17 in Dallas. I use Dallas Independent School District
18 figures, and my personal projection is roughly 75,000
19 Mexican-Americans in the Dallas area.

20 Q All right. Now, the record will show
21 that there was testimony that in 1968 there were roughly
22 29 to 30,000 Mexican-Americans in the Dallas County
23 area. Do you know whether or not the Mexican-American
24 in this 1970 census had an opportunity to designate
25 himself as a Mexican-American or Spanish surname on the

1 Direct - Martinez

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2 actual census information?

3 A No. I personally received a lot of
4 complaints when I was with the Human Relations Commission
5 concerning this specific item. A lot of Mexican-Americans
6 were confused on how they would call themselves, cate-
7 gorize themselves, or classify themselves. Many classified
8 themselves as "others" and would include "Mexican-
9 American" or "Chicano", or "Latin American". Some
10 classified themselves as "white" and some did not classify
11 themselves at all. They did not fill out their census
12 figures for that reason.

13 Q Now, using the projected school figures
14 for the Dallas Independent School District, do you have
15 an idea of how many school districts were in the DIED in
16 1960 are Mexican-Americans descent, or Spanish surname?

17 A Roughly 7 to 8,000.

18 Q Do you have any idea today how many
19 that are in the --

20 A -- exactly. 16,000.

21 Q What percentage of the school population
22 does the Mexican-Americans make up in the DIED?

23 A As of last month, this year, the
24 Mexican-American enrollment in the public schools in
25 Dallas was 10 percent.

1 Direct - Martinez

EXHIBIT - 734

2 Q Is that an overall figure or elementary
3 level?

4 A That is overall the three levels.

1 DE - Martinez

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2 BY MR. HERNANDEZ:

3 Q Now, I am going to ask you -- I believe you
4 were in the courtroom when Councilman Allen testified about
5 the Citizens Charter Association. You are familiar with
6 that organization?

7 A Yes, I am.

8 Q Have you been affiliated with it, or what
9 connection do you have with the organization, if any?

10 A The ex-President of the C.C.A., the Citizens
11 Charter Association, was the Chairman of the commission
12 that I was employed by.

13 Q There has been some testimony in the record,
14 and I would ask you if you are familiar with an organization
15 known as the Democratic Citizens for Responsible Government?

16 A I have heard of it, yes, sir.

17 Q Now, do you know whether or not there are
18 any Mexican-Americans, Executive Director, Board of Trustees
19 or in high decision level making capacity of the Citizens
20 Charter Association?

21 A None to my knowledge. I know a member, but
22 that is about it.

23 Q Do you know how many members there are of
24 the Citizens Charter Association that are Mexican-American?

25 A I know of only two.

DE - Martinez

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Q I would ask you for the DCMG. Do you know any Mexican-Americans or Americans of Spanish surname descent who are Executive Directors or on the Board of Trustees or Directors or who have high decision-making capacity?

A No.

Q Is there any connection in your opinion between the people of the Citizens Charter Association and the DCMG?

A Well, they coincide in personalities. In many cases they are the same individuals in both organizations.

Q Now, do you know whether or not there has ever been in the history of Dallas a legislator from Dallas to the State House of Representatives who actually resided within these pockets or ghetto areas that you have testified in terms of Little Mexico, West Dallas, La Bajada, Lee Altos and these type areas?

A No.

Q Now---

A I know one who ran unsuccessfully, but I don't know one who has been elected.

Q O. K. I want to briefly ask you in terms of the city elections. You heard me ask Councilman Allen

1 DE - Martinez

737

2 about Anita Martinez. She ran as a C.C.A. endorsed candi-
3 date?

4 A Yes.

5 Q Were there any Mexican-American candidates
6 that ran as not C.C.A. candidates?

7 A There were two.

8 Q Do you know how many votes they got?

9 A Approximately a little over 6,000 apiece.

10 Q Would it be a fair statement to say that
11 most of these votes came out of minority groups, black
12 and Mexican-Americans?

13 A Predominantly black and Mexican-American,
14 yes, sir.

15 Q Now, do you have an opinion as to whether
16 or not a Mexican-American could be elected in the multi-
17 member district which is presently set up for Dallas County?

18 A I personally don't think so.

19 Q Do you think he could be elected if he were
20 in a single member district?

21 A Yes, definitely.

22 Q Now, is there a particular area within Dallas
23 County that encompasses 74 or 75,000 Mexican-Americans in
24 one concentrated area?

25 A No. As I said previously, there is no

DE - Martinez

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particular area where you will find, say, a large percentage of Mexican-Americans, say, over 2,000 families or 1,500 families.

Q Well, if there were single member districts established, regardless of how they were set up within Dallas County, would there in your opinion be any districts where the Mexican-Americans would be a substantial portion of the population of that district?

A Well, a portion, yes, sir, right.

Q And in your opinion would that substantial portion of Mexican-Americans have any impact on a potential election of a candidate from a single member district?

A Yes. Basically, because most of the areas, most of the barrios are contiguous with black ghettos.

Q Would there be any areas or districts that were created as single member districts where the black American and Mexican-American together would become a majority of the residents of that particular area?

A In some, yes.

Q And do you have an opinion as to how many districts that might be?

A I think about two or three, yes.

Q Would it be a fair statement to say that the Mexican-Americans who live in these areas and the black

DE - Martinez

Americans, that they are of the same social and economic and housing make-up?

A Yes.

Q Do you know any Mexican-American from Dallas County who has ever won a legislative seat from Dallas County?

A No.

Q Do you know any Mexican-Americans who have run for office from Dallas County for the Legislature?

A Yes.

Q How many would that be?

A One.

Q And over what period of time would this be?

A That was 1963, and he was Juasquin Bolivo Garcia.

Q Do you have any opinion as to why there are not more Mexican-American legislative candidates?

A Well, basically, the Mexican-American in Dallas is not involved or is not allowed to participate in the pre-election process. He is excluded.

Q Now, do you know of any Mexican-American who has won any office county-wide in Dallas County?

A We have one Mexican-American Precinct

1 DE - Martinez

2 Chairman in Dallas.

3 Q He doesn't run county-wide, does he?

4 A No.

5 Q I wanted to ask you if you have an idea
6 as to what it would cost to run a legislative candidate
7 county-wide in Dallas County. Do you have an opinion on
8 that?

9 A Oh, between seventy and a hundred thousand
10 dollars.

11 Q Do you know -- I think the record will show
12 that there were approximately 494,000 registered voters
13 in Dallas County in 1970, and if you were to run or had
14 to run county-wide and did one mailing, do you have any
15 idea as to what it would cost you approximately to mail one
16 piece of literature to every registered voter in Dallas
17 County?

18 A The first mailing, roughly 30 or 40,000.

19 Q Now, assuming that we had single member
20 districts and there were approximately 74 to 75,000
21 residents and you had to mail to 50,000 voting registrants
22 or residents, do you have an idea as to what that mailing
23 would cost?

24 A Well, mathematically, you would cut that in,
25 say, about a fifth.

DE - Martinez

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Q So then it would be somewhere around -- if you had to mail to 40,000, for postage only, it would be a fair statement to say that it would cost you about \$4,000.00?

A Yes.

Q In other words, mathematically, would you agree if you had to run county-wide you could send one mailing for 32,000 to 400,000 registered voters, but if you had to run district-wide you could send eight mailings of \$4,000.00 each to county voters?

A Yes, that would just be one mailing, yes.

Q Right.

Do you have an opinion -- let me ask you -- have you ever had occasion to do what is called door-knocking in a political election?

A Many a time.

Q In what area did you particularly work?

A Little Mexico, El Barrio, and the West Dallas -- almost every Mexican-American barrio.

Q Now, do you have an opinion as to whether or not it would be effective to do door-knocking in a single member district election?

A Oh, definitely.

Q And I want to ask you also in terms of the

DE - Martinez

representatives that have represented Dallas County, the delegation, whether or not in your opinion if there had been Mexican-Americans representing a part of Dallas County, whether or not they would have been more effective representatives of the Mexican-American community than the legislators we have had.

A I can only speculate. I would say yes.

Q Let me ask you, do you know of any Mexican-Americans who have been appointed by legislative committees in Dallas County?

A No.

Q Do you know of any significant legislation benefiting the Mexican-American in Dallas County directly that has been offered, sponsored and passed into law primarily at the institution of the Dallas legislative delegation?

A None.

Q Now, are you familiar with the single member district setup that is utilized in Harris County?

A Yes, a little bit.

Q And do you know a state representative, LAURO CRES?

A Yes.

Q And is he a Mexican-American?

DE - Martinez

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A Yes.

Q You know that he is elected on a single member district basis in Harris County?

A In Houston, right.

Q Now, does the Mexican-American in Dallas have the same opportunity to elect a Mexican-American representative?

A Not in the multi district, no, we don't.

Q Do you think that is fair?

A I personally don't think so.

Q What do you think is unfair about it?

A Well, the fact that we don't have single member districting, and we can't have our say as far as selecting someone from the particular community, whether black, brown or white, and also from being allowed to participate, as I stated before, in the pre-election process, whether it is going to be slated or whatever. We have not been included. We have been systematically excluded.

Q Now, I want to ask you -- you heard the testimony of Dr. Cotrell from St. Mary's University. In terms of whether or not a multimember district is inherently discriminatory or whether just the way it has been applied in Dallas County is discriminatory toward the Mexican-

1 DE - Martinez

2 American---?

3 A I think in Dallas, Dallas is the prime
4 example of how it inherently discriminates against the
5 Mexican-American. It is the prime example.

6 Q Would it be a fair statement to say if the
7 Mexican-American in Dallas had not suffered discrimination
8 in the past in the areas that you discussed, education,
9 economic development, housing and employment and could
10 finance a campaign and had access to the media as to the
11 slates that are slated in Dallas County, whether or not
12 it might not be discriminatory for him, but that under the
13 present system as it applies to the Mexican-American of
14 Dallas, it is discriminatory?

15 A Yes, but we would have a better chance.

16 Q Would it be a fair analogy to correlate that
17 to the way the Dallas County Grand Jury system has been
18 used to discriminate against Mexican-Americans?

19 A In a similar manner, yes.

20 Q In other words, the Grand Jury system itself
21 may not be discriminatory, but the way in which it has
22 been applied---?

23 A Method of selection, yes.

24 Q Now, would it be a fair statement to say then
25 that Dallas is a particular case where the multimember

1 DE - Martinez

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2 districts operate to minimize or cancel out the voting
3 strength of an ethnic recognizable group, to-wit, the
4 Mexican-American, of the voting population of Dallas County?

5 A We are excluded, right.

6 Q That would be a fair statement?

7 A Right.

8 Q I just want to ask you one or two other
9 questions.

10 I would ask you to relate to the Court your
11 education and experience in whether or not you have lec-
12 tured and taught courses and worked with Mexican-Americans
13 from the valley of Texas and whether or not in your
14 opinion there is a distinction between what I would call
15 a big city Mexican-American and a valley Mexican-American?

16 A Well, as I stated before, I was employed by
17 Southern Methodist University upon graduation to work in
18 a survey conducted by the Urban Studies Institute at S.M.U.,
19 in which we interviewed over 700 Mexican-Americans from
20 the valley who were brought to LTV in Grand Prairie, and
21 a lot of the study was dealing with the cultivation levels
22 of Mexican-Americans and how they have either become
23 accustomed to an urban setting, and a lot of the differences
24 and difficulties that they have in coming from a predomi-
25 nantly rural setting.

1 DE - Martinez

74b

2 Q Would it be a fair statement then to say
3 there is a difference between them?

4 A There is quite a difference in cultura-
5 tion levels between a rural Chicano and an urban Chicano.

6 MR. HERNANDEZ: Pass the witness.

7 JUDGE JUSTICE: Is there further
8 examination from the Plaintiffs?

9 MR. LUNA: I have some, Your Honor.

10 JUDGE GOLDBERG: You have some?

11 MR. LUNA: Earl Luna, representing
12 Defendant Roy Orr, State Chairman of the
13 Democratic Executive Committee.

14
15 CROSS-EXAMINATION

16
17 BY MR. LUNA:

18
19 Q Mr. Martinez, where did you say you lived
20 in Dallas County?

21 A Live in Dallas County presently?

22 Q Yes, sir.

23 A 6176 Fisher.

24 Q Where is that?

25 A That is off Northwest Highway and Skillman.

1 DE - Martinez

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2 Q All right, sir. If we pointed to -- I
3 believe this is the Little Mexico area where you grew up
4 (indicating), is it not?

5 A Right.

6 Q Now, with relation to that, where do you
7 live? Would it be---?

8 A Northeast Dallas.

9 Q Northeast Dallas?

10 A Right.

11 Q Right in here somewhere (indicating)?

12 A Right.

13 Q So out in the area where you live, are there
14 many or very few Mexican-Americans or blacks who live in
15 the area where you do for a mile radius?

16 A In my complex there are only three Mexican-
17 American and blacks, the apartment complex I live in.

18 Q Yes, sir, and for a mile or more radius of
19 where you live there are still either no more or very few
20 more, right?

21 A Right.

22 Q Now, isn't that an example of the disperse-
23 ment of the Mexican-American population generally in Dallas
24 County with the exception of those two or three pockets
25 that you have told about?

1 DE - Martinez

74b

2 A Well, I think I am an exception, because my
3 wife attends school at S.M.U., and I have to live there,
4 because she has no transportation.

5 Q All right. You know that we have quite a
6 number of Mexican-Americans scattered around in the
7 Garland community, don't you?

8 A Yes.

9 Q And Carrollton?

10 A Some, right.

11 Q They are exceptions, too?

12 A There are very few, right. The majority of
13 them are either middle class, upper middle class Mexican-
14 Americans, professionals, a lot of them acculturated
15 Mexican-Americans.

16 Q But Mexican-Americans, nonetheless?

17 A I call them Mexican-Americans. They might
18 not consider themselves Mexican-Americans.

19 Q So, in Dallas County would it be fair to
20 say rather than the Mexican-American population being
21 concentrated in a particular area, that it is more dispersed
22 and is, in fact, assimilated with the rest of the popula-
23 tion?

24 A No, I don't use the word "assimilated."
25 They are dispersed geographically but they are not

1 DE - Martinez

745

2 assimilated.

3 Q So there is no area in Dallas County where
4 the Mexican-American, even if we gerrymandered a district,
5 there is no area in Dallas County where you could have
6 a contiguous district, much less compact, that would be
7 composed of anything approaching 50 percent of a 74,000
8 population---?

9 A No, as I stated before, in the entire city
10 there is only approximately 70 or 75,000 Mexican-Americans.

11 (No omission here.)
12
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25

1 Cross - Martinez

750

2 Q Now, isn't one of the problems that
3 the Mexican-American population is facing is a language
4 difficulty?

5 A Well, personally, it is not our problem,
6 no.

7 Q Well, some of the children have got --
8 we need to solve the problem of teaching the children the
9 bilingual?

10 A Right. The problem is allowing all
11 children to be bilingual.

12 Q Yes. Now, would you say that that
13 problem is the same with the whites and Blacks?

14 A Well, most Blacks and most Anglos are
15 monolingual, so they obviously have a problem linguisti-
16 cally.

17 Q Okay. You mentioned, I believe, Anita
18 Martinez?

19 A Yes.

20 Q She is Mexican-American?

21 A Yes.

22 Q And, she ran for the City Council and
23 was elected on the Citizen Charter Slate, was she not?

24 A Yes.

25 Q Who was her opponent the first time?

Cross - Martinez

751

1 A Frank Hernandez.

2 Q The Frank Hernandez that just questioned
3 you?

4 A Yes.

5 Q And, he was not on the C.C.A. slate?

6 A No, he was an independent.

7 Q He was an independent?

8 A Right.

9 Q And, she was elected in that race?

10 A She was on the C.C.A. slate, right.

11 Q You mentioned that the C.C.A. and the
12 D.C.R.G. were the same people. Mr. Martinez, isn't it a
13 fact that the C.C.A., Citizens Charter Association is a
14 City of Dallas type organization, that is correct, isn't
15 it?

16 A Simultaneously, yes, right.

17 Q On the other hand, the D.C.R.G. is a
18 County-wide organization which works in Democratic political
19 in all of the municipalities in Dallas County, is that
20 right?

21 A Yes, sir.

22 Q So, then, we are talking about not the
23 same people, are we?

24 A They overlap. There is a lot of local
25

1 Gross - Martinez

752

2 city businessmen who belong to C.C.A. who are officers
3 in D.C.R.G. who also are involved in County affairs, so
4 it is repetitions.

5 Q Now, you mentioned that we had one
6 Mexican-American precinct chairman; what is his name?

7 A Henry Martinez.

8 Q What is his precinct -- is it 411?

9 A I think it is 411. In fact, yes, I
10 am sure it is.

11 Q You think it is 411? Now, in Dallas
12 County, the -- That is, a Democratic precinct chairman
13 isn't it?

14 A Yes.

15 Q In Dallas County, you are aware that
16 the precincts have something less than 300 voters in each
17 precinct, are you not?

18 A Approximately, yes, sir.

19 Q In other words, you know that under
20 the statute 3000 is the minimum?

21 A I am aware of it, yes, sir.

22 Q And, you are aware, also, that Precinct
23 Chairmen are elected from the people living within that
24 3000 or less group?

25 A Yes, I have been told that. Yes, sir.

1 Cross - Martinez

753

2 Q In other words, the precinct chairman
3 are elected from the single member district; that district
4 being the precinct in which they lived, composed of not
5 more than 3,000 votes?

6 A Yes, theoretically that is the way it
7 is set up.

8 Q Now, with the County being broken down
9 as it was last year, into three hundred one precincts, we
10 were only able to elect 1 Mexican-American precinct
11 chairman out of the whole bunch, weren't we?

12 A Yes, sir.

13 Q Do you know Mr. Richard Manchaca?

14 A Yes, I do.

15 Q Who is he?

16 A He is a teacher at -- in a local junior
17 college.

18 Q El Centro Junior College?

19 A Yes, right.

20 Q If Mr. Manchaca said this -- or whether
21 or not he did, I am going to ask you if you agree with it,
22 please, sir. With respect to why there has never been a
23 member of the Legislature elected from Dallas County, and
24 as to why he would rather run at large than in a single
25 member district, would you agree with this; my reasoning

1 Cross - Martinez

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2 is that heretofore, we have never been politically aware,
3 as much so, as in the last two or three years. It is
4 coming on. We are becoming increasingly aware of political
5 power that we might be able to use. Would you say that
6 is a fair statement?

7 A No, I wouldn't agree with it totally.

8 Q All right. On the cost of campaigning,
9 isn't it a fact that it is a practice in Dallas County
10 for groups, whether it is the citizen charter association
11 or any other D.C.R.G. or any other group that is working
12 for candidates when they are running a slate, they will
13 run an ad in the paper for 18 and put everybody's name on
14 that one ad?

15 A That has been the practice in some
16 cases.

17 Q So, then, 18 have the benefit of an
18 ad, whereas, if they were running separately in individual
19 districts and not on a ticket, it would take 18 separate
20 ads to give them the same recognition if the ads were run
21 separately, would it not?

22 A What was your question again?

23 Q Isn't it cheaper when people run
24 together on a team for politics and run one newspaper ad
25 asking folks to vote for all 18 of those people than for

1 Cross - Martinez

755

2 each of them to run one ad of the same size?

3 A I don't think so. I think it depends
4 on the exposure of the media over the individual candidate.

5 Q Many of the Mexican-Americans in Dallas
6 County have immigrated there from other parts of Texas
7 and other areas, have they not?

8 A A large number, yes.

9 Q Would you say a majority of them?

10 A I couldn't tell you definitely. We are
11 working on those figures.

12 Q But, your best judgment is that a
13 majority of them did come from other areas?

14 A I really sincerely couldn't positively
15 tell you exactly if that is true or not.

16 Q So, then, as far as the education is
17 concerned, whatever the educational level of those who
18 came from other areas who had already finished school,
19 they either got, or didn't get their education in that
20 area where they came from and are not related to the
21 Dallas School District, are they?

22 A In some cases, yes. But, in other cases,
23 where you have second, third, fourth generation Mexican-
24 Americans -- or generation Mexican-Americans -- that are
25 Dallasites, you still have the correlative statistics,

Cross - Mortimer

75b

educational statistics, in dropouts. So, there is a lot of similarity educationally.

Q Richard Muchaca is well-educated, isn't he?

A Yes.

Q He understands the problems of the Mexican-Americans relatively well, as well as you are concerned?

A That is debatable.

MR. LUNA: Thank you, sir.

JUDGE GOLDBERG: Any other questions?

MR. HERNANDEZ: I have one question, Your Honor.

CROSS EXAMINATION

QUESTIONS BY MR. HERNANDEZ:

Q Mr. Mortimer, I just have one question. Mr. Luna has asked this of other witnesses, and I would ask you: what is more important in order to be elected in Dallas County, if you are a Mexican-American, support and manpower and financing and organization, such as the D.C.R.C. or the creation of a single member district?

1 Cross - Martinez

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2 A Well, I think you know any election
3 needs manpower and financing, but I wouldn't agree that
4 single member districting is the important thing.

5 Q Do you have any particular reason for
6 that?

7 A Well, just experience and history as
8 far as Mexican-American situations and candidates in
9 Dallas and the aspirations of many Mexican-Americans to
10 run for office in Dallas.

11 Q Let me ask you if it would be a fair
12 statement to say that the Mexican-American -- and this
13 may not be so for a middle-class white American or upper
14 class white American, at least in Dallas -- but for the
15 Mexican-American in Dallas, is it a fair statement to say
16 that it is certainly true that the most important factor
17 in the election would be the creation of single member
18 district?

19 A Yes, definitely.

20 MR. HERNANDEZ: Thank you.

21 JUDGE GOLDBERG: Anyone else?

22 MR. IDAR: Your Honor, that concludes
23 our witnesses. However, there are two or three matters
24 I would like to take up with the Court before we rest
25 our case. Number one, I am not certain whether our

1 record reflects the total population 758

2 in the tracts that Mr. Kerbel testified

3 to yesterday. I don't recall if we

4 actually established that for the record,

5 so I wonder if the State would stipulate

6 on that information with us to save having

7 to recall Mr. Kerbel -- that the total

8 population of the 27 tracts in 1960 by Mr.

9 Kerbel -- testified to yesterday -- is

10 211,780 people; that of those 166,332 were

11 Mexican-Americans and 8,322 were Black,

12 according to a 1960 census.

13 MR. CUREY: We will so stipulate.

14 MR. EDAR: With respect to the 1970

15 census, in which case the 27 tracts became

16 28 tracts, we would like to stipulate that

17 the total population in 1970 was 197,470

18 and the Black population was 7,835 and that

19 the Mexican-American ethnic breakdown is not

20 yet available, based on the 1970 census

21 figures.

22 MR. CUREY: That information is from

23 the census, 1970?

24 MR. EDAR: Yes.

25 MR. CUREY: We will so stipulate.

MR. IDAR: Your Honor, I believe 759

I had better clear up a thing. My notes don't reflect whether or not -- don't reflect if I actually made it known to counsel that I was tendering exhibit BI-9 -- BI number 9, which is a set of campaign expense reports that have been filed with the County Clerk of Bexar County. I wonder if Mr. McDaniel would like to examine this at this time and see if he has any further objection.

1 MR. MCDANIEL: No, sir.

2 JUDGE GOLDBERG: No objection?

3 Received.

4 MR. MCDANIEL: Not other than noted in
5 the pretrial.

6 JUDGE GOLDBERG: Yes.

7 MR. EDAR: DI number 9, then, is --
8 Okay. Now, Your Honor, one more thing. We
9 have, as the Court is aware, plead, relying
10 to some extent on certain language in the
11 Chavis case, relating as to the distinction
12 between the Indiana and the Texas system.
13 For the purposes of this case, I would like to
14 read a series of the Indiana statutes, but
15 I would like to request that the Court take
16 judicial notice of -- if the Court will allow
17 me to do that.

18 JUDGE GOLDBERG: Well, there is a
19 statutory method for introducing -- go ahead.
20 Do you have any objection to it?

21 MR. CHERRY: I was just going to suggest,
22 for the purpose of saving time for the Court,
23 that he simply prepare copies of them and make
24 exhibits and submit them to the Court for the
25 Court's consideration.

JUDGE GOLDBERG: Can you make

copies?

MR. IDAR: I will be glad to do that.

I have talked to Mr. McDaniel about this and he simply suggested that I request the Court to take judicial notice.

JUDGE GOLDBERG: It will save us time if you will just make copies and we will all have them.

MR. IDAR: I will be glad to do that.

Now, one other matter that I would like to request some guidance from this Court as to how to proceed, this consolidation of the four cases in one trial has me uncertain as to the legal procedure. I have a series of cases that have been tried in different districts, federal districts of Texas. Some of these are reported cases and others, as far as I know, may not yet be recorded, but they are all cases that relate in one form or another to the Jury actions of the State of Texas; statutes that have been set aside by the Courts, to new statutes that have been enacted as a result thereof. The opinions reflect certain findings as they affect the Mexican-American population,

1 all of which I think would be material 762
2 and would be relevant to the consideration of
3 this case, based on the allegations that we
4 have plead in our complaining intervention.
5 And, I have again discussed this with Mr.
6 McDaniel and he simply suggested that I draft
7 a memorandum and submit it to him and to the
8 Court listing the cases that we are concerned
9 with.

10 JUDGE GOLDBERG: You mean legal
11 precedents?

12 MR. IDAR: Yes, sir.

13 JUDGE GOLDBERG: We will get to
14 that in a little bit.

15 JUDGE WOOD: You mean this is in
16 the form of authorities on which you are
17 relying?

18 MR. IDAR: I am not citing them
19 for the purpose of the law involved, but
20 because some of these opinions actually contain
21 some very significant findings of fact by the
22 Courts -- not only that, but I think it is
23 crucial that the Court --

24 JUDGE JUSTICE: Perhaps you could
25 give us an example.

1 MR. IDAR: Well, Your Honor.

765

2 the series of orders that have been entered
3 in United States of America versus the State
4 of Texas, both as related to the basic case
5 and the intervention between the Del Rio and
6 the San Felipe School District. I think, for
7 the purposes of this case, for example, it
8 would be very significant, I believe, the
9 fact that the Texas Education Agency has been
10 enjoined from taking certain actions by this
11 particular Court.

12 JUDGE JUSTICE: What is more to the
13 point, it was a case that was affirmed by
14 the Fifth Circuit.

15 JUDGE WOOD: Couldn't we stipulate
16 that has happened for the purpose of this
17 record?

18 MR. IDAR: I wanted to do so, and I
19 so suggested to Mr. McDaniel, and he has
20 suggested that rather than do that, that I
21 submit this list of cases to the Court and what
22 they involve.

23 MR. MCDANIEL: As I understand it, what
24 he wants to do is he wants to cite cases as
25 examples of discrimination that the State has

1 been guilty of, and I suggested he 764
2 do it in memorandum form, because you have got
3 the case report and you can certainly read
4 the cases and see what has been held in each
5 of them and any that were not reported in the
6 book. I suggested he merely furnish a
7 memorandum or copy of the memorandum opinion
8 to the Court.

9 JUDGE WOOD: Wouldn't that be sufficient?

10 MR. IDAR: If that is all right with
11 the Court, we will be glad to do it that way.

12 JUDGE GOLDBERG: Fine.

13 MR. MCDANIEL: We, of course, don't
14 agree to the relevancy.

15 JUDGE GOLDBERG: I understand.

16 MR. MCDANIEL: Thank you.

17 JUDGE JUSTICE: What other cases,
18 briefly, do you have there?

19 MR. IDAR: Well, to give the Court some
20 idea --

21 JUDGE JUSTICE: I am doing this for
22 the Tyler case only.

23 MR. IDAR: We have the Corpus Christi
24 and the Cisneros case, which was decided.

25 JUDGE GOLDBERG: Wait a minute. Now

1 far are we going with this? These 765
2 cases have been decided, haven't they, by
3 District Courts or Courts of Appeal and are in
4 the books.

5 MR. IDAR: Yes, sir.

6 JUDGE GOLDBERG: They are legal
7 precedents and what they stand for and the
8 fact findings that are represented by these
9 cases will be reflected in the Court's
10 opinion.

11 MR. IDAR: Fine.

12 JUDGE GOLDBERG: I don't understand.
13 Are you suggesting that the record should be
14 encumbered with these legal precedents?

15 MR. IDAR: I was suggesting that some
16 of these cases the records reflect the fact
17 that the Texas Legislature acted pursuant or
18 because of the Federal Court action that has
19 taken place.

20 JUDGE GOLDBERG: Well --

21 JUDGE JUSTICE: Well, submit it in the
22 form of a memorandum.

23 MR. IDAR: Well, we still have not
24 settled the question with the State, Your Honor,
25 as to these last portions of the evidence of

1 Mr. Korbel relating to the unfinished
2 work that we had on the voting patterns of
3 the northern portion of San Antonio. The
4 Court had indicated to us that we try to
5 arrive at some type of an agreement with the
6 State so that we could complete that study
7 and submit a post-trial memorandum to the
8 Court. I haven't been able to work out any-
9 thing satisfactory with the State, so before
10 resting my case, I would like to see what we
11 are going to do about that.

12 MR. McDANIEL: I am not sure what this
13 study is directed to or what it is supposed
14 to show. If that could be explained to me,
15 perhaps we can stipulate.

16 JUDGE GOLDBERG: What do you want it
17 to show?

18 MR. IDAR: We made a study showing
19 that in the 27 tract area, the voting pattern
20 of the population, for example, that Mexican-
21 Americans will generally tend to vote for
22 Mexican-Americans. We are proposing to make
23 a study of a substantial portion of the rest
24 of the City to show that in these other areas
25 the Anglo American people will vote against a

1 Mexican-American candidate from as 767
2 high as from 6 to 1, to 9 to 1; that is the
3 reverse of what we have already introduced.

4 JUDGE GOLDBERG: When would such a
5 study be completed? We can't -- we have got
6 to stop this case at some point.

7 MR. IDAR: I realize that, Your Honor,
8 but that was the reason I suggested a post-
9 trial memorandum. I believe we can finish
10 the work and have the memorandum to the Court
11 by Monday.

12 JUDGE WOOD: That is too late. Can't
13 you get somebody to come up here and testify
14 to this? I mean, we are going to finish this
15 case by noon tomorrow.

16 MR. IDAR: I can have Mr. Korbøl take
17 the stand, then, to testify how far he has
18 got on the preliminary study made.

19 JUDGE GOLDBERG: Unless you have
20 another suggestion.

21 MR. MEDANIEL: I have no other
22 suggestion. I was just going to say that
23 obviously we will object to this as showing
24 that the vote is against Mexican-Americans
25 as opposed to the candidates, because there

1 is no way this study can go into 760
2 the minds of the voter to show what -- nor I
3 would think, could you pin that down to
4 percentages either in the precincts. It seems
5 to me it is too speculative to be of prohibitive
6 force.
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1 JUDGE GOLDBERG: If you have 760
2 got a witness that you want to tender at this
3 time, tender him. Let's hear what he has got
4 to say. Let's hear objections to the testimony
5 and let's get this thing moving.

6 MR. IDAR: All right. Mr. Korb, will
7 you take the stand?

8 JUDGE GOLDBERG: Let's get the show
9 on the road.

10
11 MR. KORB, was recalled to the stand by
12 Mr. Idar;

13 DIRECT EXAMINATION

14
15 QUESTIONS BY MR. IDAR:

16 Q You are the same George Korb that
17 testified yesterday?

18 A Yes, sir, I am.

19 Q At one point in your testimony, you
20 indicated that you had started to comprise certain data
21 relating to the voting patterns in the northern part of
22 the City of San Antonio?

23 A Yes, sir, I did.

24 Q Will you refresh our minds, as to the
25 type of studies that you were making?

1 Direct - Korbal

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2 A Well, if you will remember, we did the
3 study on these 27 or 28 contiguous census tracts,
4 depending upon whether we were doing the '60 census or
5 the '70 census. Since the '70 census data with respect
6 to the breakdown on minorities, is not available, we had
7 to use the 1960 census figures. Now, on information and
8 belief, it is our understanding that while the population
9 is slightly declining within the barrio area, nevertheless,
10 the Mexican-American density, as that term has been used,
11 has increased substantially. Using the 1960 census
12 figures, I tried to pick out very high density Anglo
13 precincts. Now, we picked those out by corresponding
14 those precincts from these census tracts. I picked out
15 what I felt were nine separated highly densely populated
16 Anglo precincts and I ran a preliminary study on these
17 precincts. That preliminary study indicated, as I said,
18 yesterday, that the vote ran from 6 to 1 to 9 to 1 against
19 the Mexican-Americans, while at the same time, the vote
20 from the Barrio, or these 27 tract precinct areas, ran
21 approximately the same, a little less in favor of the
22 Mexican-American. I don't have the study completed, but
23 that was --

24 JUDGE CHILDERS: -- that was your
25 preliminary conclusion?

1 Direct - Korbel

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2 A That was my preliminary conclusion. I
3 think when we have the '70 census data, we will be able
4 to isolate the angle precincts and will show that more
5 conclusively.

6 Q That is as far as you were able to get--

7 A -- that is as far as I am able to go.

8 JUDGE GOLDBERG: He has testified that
9 up to now, that is what he concurs. Now, do
10 you want to go into --

11 MR. CUREY: -- we will accept it as a
12 preliminary report, Your Honor.

13 JUDGE GOLDBERG: All right.

14 (The witness stood aside).

15 MR. IDAR: Your Honor, I previously
16 advised the Court that we had been expecting and still are,
17 some 1970 census data relating to Bexar County, showing
18 the breakdown of the Mexican-American population in
19 the particular County. I understand it has been mailed
20 in care of myself -- that is, myself in care of the
21 District Clerk, so with that reservation, and I hopefully
22 -- if that information arrives between now and the time
23 this trial closes, I would like to leave that open.

24 JUDGE JUSTICE: We might state that at
25 the Pre-Trial of this case, it was agreed that

1 Direct- Korbai

2 if these census figures did come to the counsel before
3 this case was taken under advisement by the
4 Court, that they could be used, and subject
5 to the objections of the State.

6 MR. CUNY: Yes, sir.

7 JUDGE GOLDBERG: Okay. Now, does that
8 complete your case?

9 MR. IDAR: We are resting at this time,
10 Your Honor.

11 JUDGE GOLDBERG: Republicans next.

12 MR. CROUCH: Yes, Your Honor.

13 If it please the Court, I would like
14 to call as our first witness, Mr. Vick
15 Robertson. While Mr. Robertson is --

16 MR. CUNY: -- excuse me just a minute.

17 MR. CROUCH: Yes, sir.

18 MR. CUNY: Your Honor, may I be excused
19 for a moment?

20 JUDGE GOLDBERG: You certainly may.

21 (The witness was duly sworn)

22
23 VICTOR ROBERTSON,

24 called as a witness on behalf of the Plaintiffs
25 (Republicans) after having been first duly cautioned and

1 Direct - Robertson

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2 sworn to testify the truth, the whole truth and nothing
3 but the truth, testified as follows:

4
5 DIRECT EXAMINATION

6
7 QUESTIONS BY MR. CROUCH:

8 MR. CROUCH: May it please the Court,
9 if I might make a couple of comments about our
10 case before we start our presentation, hope-
11 fully putting it in what I think should be the
12 proper perspective, I would like to say at the
13 outset that we are not contending that -- are
14 not challenging the legislative Redistricting
15 Board's action on the basis that it failed to
16 create or give the Republicans a district. We
17 are merely saying that due to the voting habits
18 and patterns of approximately a half million
19 citizens in northwest Dallas County who have
20 common lifestyles and share common interests,
21 socioeconomic interests, that the effect and
22 design of this legislative Redistricting Board's
23 plan dilutes, minimizes and cancels out the
24 voting strength of that identifiable Republican
25 element.

Direct - Robertson

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I would also state that we recognize that the burden is upon us to show that dilution or encroachment, but I think we have got to keep in perspective the language of the Chevis case -- the Whitcomb v. Chevis case, in which the Court very specifically recognizes that the size of the district or the larger the district the greater the tendency to cancel or minimize that vote.

Now, I would call attention to the fact to the Court that we have a County of a million, one hundred and -- a million, three hundred and twenty-seven thousand population.

The population of Marion County in Chevis was 700,000. The population of Russell which was involved in the Fortune case was -- the entire state was only 700,000. So it is our contention that this is an extremely large multi-member district, and as such, minimizes or dilutes the voting strength of those people who have a common lifestyle and share a lot of distinct socioeconomic similarities.

Q Mr. Robertson, would you state your

name?

Direct - Robertson

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A Victor F. Robertson, Junior.

Q Where do you reside?

A 4306 McKinney Avenue, Dallas, Texas.

Q All right, by whom are you employed,
and in what capacity?

A I am vice-president of Lewis Boles and
Grace, Incorporated.

Q What kind of work does your firm do?

A We are research and management
consultants specializing in public opinion and
marketing research.

JUDGE JUSTICE: Would you speak into
the microphones?

A Yes.

Q Would you answer that question again?

A We are research and marketing consultant.
We specialize in marketing and public opinion research.

Q What is your educational and profes-
sional background?

A I have my Bachelor's from Texas Christian
University and my Master's in journalism from the University
of Iowa. I have been in and around politics for 20 years
now in Dallas County. I worked from 1942 to 1945 as a
political and government reporter for WHAA radio and

1 Direct - Robertson

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2 television. Between 1965 and 1967, I was retained as
3 a research consultant for the Republican executive
4 committee for Dallas County and since June of 1967, I
5 have been employed full time in political research and
6 consulting with Lewis, Boles and Grace.

7 Q In your capacity as vice-president of
8 Lewis, Boles and Grace, Mr. Robertson, what does that
9 work involve?

10 A Physically, it involves getting
11 together with political candidates or organizations or
12 individuals interested in candidates, discussing their
13 political problems and the nature of the districts that
14 they tend to run in, designing a questionnaire conducting
15 a public opinion survey, analyzing it, evaluating it and
16 getting together with them and consulting and advising
17 with them, designing their campaign strategy and tactics
18 and finance and so forth with the object of winning the
19 political campaign.

20 Q Does your firm do political research
21 and consultation for all candidates of political parties
22 political persuasions?

23 A Yes. We work for both democratic and
24 Republican parties, and for example, in Dallas County, we
25 have done work for the Dallas Independent School District

1 Direct - Robertson

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2 for the Citizens Charter Association, and for the DCRG
3 and we have done, of course, work for conservative
4 Democrats, the AFofL-CIO, as well as for the Republicans.
5 Multi-parties, Your Honor.
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1 D. E. - Robertson

2 Q Now, the work done by your firm in pre-
3 paring these political surveys and political polls and
4 reports, is that done under your supervision and
5 direction?

6 A Yes, it is. And in fact, the analysis
7 and report writing of every political study that we
8 have done for the last four years, with the exception
9 of one which is being done by one of my partners today,
10 has been done by me.

11 Q In the process of conducting political
12 surveys and research, do you also gather data to give
13 you the socioeconomic characteristics of the voters
14 you are studying?

15 A Yes, we do. We gather information on
16 age, sex, ethnic composition, income, membership in
17 labor unions or partnerships in business organizations,
18 level of education and all of these factors.

19 Q Mr. Robertson, do you have a copy of
20 what has been marked as the DR Exhibit Number 1?

21 A Yes, sir, I do.

22 Q Would you identify that exhibit?

23 A Yes. This I have entitled "Election
24 Returns Relating to Republican Voting Patterns in
25 Dallas County, 1956 to 1970", and it is divided into

1 D. E. - Robertson

2 a couple of sections.

3 The first one is "general election returns for
4 major contested races" and this I have done by
5 commissioners' districts, and I will relate this back
6 in just a moment if I may, Your Honor.

7 The second section, which was what we were
8 originally asked to undertake, is election returns for
9 the area containing the alleged definable Republican
10 majority. And these are related in turn to the appendix,
11 which is a series of five maps.

12 The first one, which is also shown in larger
13 style on the board, is the outline of the area which is
14 alleged to contain the identifiable Republican majority.

15 Q That is a census tract map?

16 A Now in the second map then, the first
17 commissioner's district of Dallas County, as it existed
18 up through the year of 1967, is layed over that alleged
19 area in green, which is designed to show that the area
20 is largely one and the same thing. We have done this
21 for the purpose of relating back to the prior election
22 returns from 1956 to 1970, because during that period
23 they were compiled primarily in terms of the commissioners
24 districts, and therefore it is easy to relate the
25 commissioner's district to this alleged area of the

1 D. E. - Robertson

2 defined Republican majority.

3 Then for the years 1968 through 1970, we have
4 presented the returns again for the census tracts which
5 involve or are involved in this total majority.

6 The third map here shows the change that took
7 place in the first commissioner's district in the year
8 of 1968 and it relates to the precinct elections of
9 1968 and 1970, and the first commissioner's precinct
10 are based on those.

11 The final two maps, the fourth one, shows the
12 area of the third congressional district as it is
13 apportioned under the new apportionment and which is
14 generally acknowledged all of the way along the line to
15 be basically a Republican congressional district with
16 a Republican incumbent, and again it is designed to show
17 the large similarity in area which is covered.

18 And the final one is designed to show the
19 new eighth senatorial district, which again has a
20 Republican incumbent, and again, a much similar area
21 to what we are dealing with in the alleged identifiable
22 area.

23 Now the returns themselves, going through these
24 years, are for major contested races where Republican
25 candidates were running. Although we have shown, also,

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1 D. E. - Robertson

2 in 1958, for example, the major state legislative race,
3 and this was the first time the Republican Party in
4 Dallas County ever ran anybody for the State Legislature
5 at all.

6 Q When was that?

7 A 1958.
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1 DE - Robertson

2 BY MR. CROUCH:

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3 A In subsequent years we are showing the
4 races for the Senate where there is a significant contest
5 or for Governor where there is more than just a token
6 candidate, for Congress, and at the same legislative
7 level we are showing the returns for the highest Republican
8 vote-getter and the lowest Republican vote-getter.

9 Now, the Court may notice as it goes
10 through here that in each instance in District 1, which
11 is essentially the identifiable Republican area which
12 is alleged here, in 1956 General Eisenhower got 76 percent
13 of the vote, and the Congressional candidate, Bruce Alger,
14 got 68 percent.

15 In 1958 the senatorial candidate for the
16 Republicans, Roy Whittenburg, of Amarillo, over 60 percent.
17 The same for Congress. In this race -- again, this is
18 the first time the Republicans are running for the State
19 Legislature. They get 39 percent with people who were
20 totally unknown before they started running.

21 In 1960, as you will notice, the returns
22 from this area, four Republican candidates who ran there,
23 range from slightly over 50 percent all the way to 70
24 percent with the preponderance of them being over 55 per-
25 cent.

1 DE - Robertson

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2 As you know, I am sure, in politics it is
3 generally considered that 55 percent is the level at
4 which you have what we call a safe district.

5 In 1962, because of the nature of the
6 circumstances, you will notice that all of the races
7 involved here run 56 percent or better and up to two-
8 thirds.

9 In 1964, which was a totally abnormal
10 year also, because of the assassination and the reaction
11 to it, still the Presidential candidate got 55 percent of
12 the vote. The senatorial candidate got 66 percent of
13 the vote. Of the legislative candidates some carried,
14 some did not.

15 Now, there were four incumbent Republican
16 legislators running at that time. Three of them carried
17 the first commissioners district. The fourth one lost
18 by 20 votes. The other five candidates who were new
19 were defeated in that tidal wave in '64.

20 In '66 the same pattern basically emerges.
21 Here the lowest state legislator got 51 percent of the
22 vote. The rest are running 54, 55, up to John Tower who
23 got 74 percent of the vote.

24 And in 1968 essentially the same pattern
25 here again. The lowest state legislator received about 56

DE - Robertson

percent of the vote, ranging up to 63 percent of the vote, and in 1970, again essentially the same pattern. The lowest state legislator received 56 percent of the vote, and it ranges up to 60 or 70 percent, practically, for the gubernatorial candidate.

Then the following returns related instead of just to the commissioners district, basically, along the same pattern to this whole area as defined in yellow as the alleged definable Republican area or the area of the definable Republican majority.

And in 1968 you will notice that here -- now, if the Court recalls, in 1966, and in 1968, this area of Dallas County was divided into three different Congressional Districts. Part of it was added to an area running out to Wichita Falls. Part of it was adjoined to an area southeast and northeast from there, and part of it running due south of there, so that the Congressional races reflected here reflect that portion, actually, and in some instances, particularly in the 5th Congressional District, a candidate who did not have adequate financing but still received 48 percent of the vote.

Basically, at the legislative level you will notice that the legislative candidates all are carrying in this area, the lowest return here being 54.1

1 DE - Robertson

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2 percent of the vote.

3 And the same pattern emerges again in 1970.
4 The figures would seem to indicate that over essentially
5 the last 20 years that the people within the area basi-
6 cally outlined here have expressed the continuing prefer-
7 ence for Republican candidates when those candidates have
8 been in major contests.

9 Q Mr. Robertson, is it safe or can we con-
10 clude from these figures that in this area the voters
11 have expressed a preference, when given the choice,
12 for Republican legislative candidates since 1958 with
13 the exception of 1964, which you say was an unusual year?

14 A Oh, I think even in the context of 1964,
15 with the situation being what it was politically at that
16 time, the fact that three of the four incumbents were
17 in a sense re-elected by the people in this area is
18 still indicative of their preference for Republican
19 candidates.

20 Q What is the population of this area?

21 A Approximately 561,000 people.

22 Q Now, in the new Reapportionment Bill the
23 new 3rd Congressional District, and I believe it is on
24 the last map you showed and the new---

25 A Next to the last.

DE - Robertson

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Q Next to the last map?

A Yes.

Q And the new 8th Senatorial District, these are now held by incumbent Republicans?

A Yes, they are.

Q And are they generally referred to as Republican Districts?

A Yes, they are.

Q Do you consider them safe Republican Districts in your professional opinion?

A Yes, I do, and from what I have heard from the Democrats, they do, too.

Q Now, it is true that in Commissioners District 1 we have had a Republican commissioner since 1960?

A That is correct.

Q Mr. Robertson, also contained within this district there are two Republican Justices of the Peace elected, as I recall?

A That's right.

Q Judge Cole and---?

A Judge Patzig.

Q ---Judge Patzig.

And, as I recall, Judge Patzig was re-elected in the last election unopposed. Is that correct?

DE - Robertson

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A I believe that is true.

Q We did not have any Democratic opposition?

A No.

Q So his nomination in the Republican primary was tantamount to election.

In the area that has been defined, do you in your opinion consider that the voters in this area are Republicans and have expressed a preference for Republican candidates based on the history of these elections?

A Well, to answer the question, "Are Republican," is a rather difficult thing, inasmuch as there is no party registration in the State of Texas, therefore, no legal definition in that sense, but in the real sense when you finally come down to it, people are as they behave, and these people behave Republican, whatever they may be.

(LAUGHTER)

Q In your opinion, if we had something less than county-wide districts, even subdistricts as they once had in Houston, running by Commissioners Districts or by Senatorial Districts or by Congressional Districts or by individual districts, do you believe that these people would likely elect a Republican State Representative?

A The whole history of their electoral behavior

1 DE - Robertson

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2 says that the probability is that they would.

3 Q Mr. Robertson, in your professional experience have you had occasion also to advise and give
4 counsel to prospective candidates, both Democrats and
5 Republicans, as far as the running for political office
6 and managing political campaigns and preparing budgets,
7 et cetera?
8

9 A Yes, all the way from, you know, people
10 like Lyndon Johnson and John Connally down to people
11 running for the State Legislature.

12 Q What in your opinion would be, if you were
13 advising a candidate, or perhaps if you have advised a
14 candidate recently, what in your opinion would be, or what
15 would be your advice to him, as far as getting elected to
16 the State Legislature, running at large?

17 A Well, in the 1970 campaign there was an
18 instance in which I had to do this, and from a financial
19 point of view, which I gather is what you mean, we recommended that while it might be possible to get by because
20 of relative unfamiliarity on the part of his opponent, of
21 a budget of about \$75,000.00, that it really ought to take
22 \$100,000.00 to \$125,000.00, and this is based upon a kind
23 of formula that we used, which is to say, with basically
24 large electorates an efficient campaign, well-run, generally
25

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can get by for about a dollar for every vote that you need to generate or to win.

Q In your opinion is it necessary if a prospective candidate wanted to run for the Legislature or a multimember district, would it be necessary that he use the television media extensively to reach a million three hundred thousand population or registered voters of approximately 600,000?

A A prospective candidate can do one of three things, really. He can run his own race, in which case the answer is definitely yes, because the people won't vote for a man unless they know him, and he's got to get himself known to them somehow as a political animal, and television is the only reasonable medium for doing this for the individual candidate.

Secondly, he can be run by a slate and let them pay the freight and basically ride, or third, he can just put his name on the ballot and stay home and hope.

These are really the only options he has. With this kind of mass exposure, you can't reach an electorate of half a million people.

Q Would this type of expenditure be necessary if he were to run in a single member district in Dallas County?

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2 A No, when we talk about a single member
3 district, we are talking about 75,000 people roughly, and
4 the way Dallas County runs, we are talking about an elec-
5 torate of probably about 30,000. It may vary some from
6 one place in the county to another, but on the average it
7 will run about 30,000.

8 Then, if we talk about the Democratic Primary,
9 we are talking about an electorate that will turn out at
10 the rate of maybe six or ten thousand votes, out of which
11 he has got to get five. He can run his whole campaign on
12 two to three thousand dollars and be in good shape, to say
13 nothing of being able to get on his feet and do something
14 and really get to know the people.

15 This is where I think it imposes a tremendous
16 burden on the candidates.

17 Q Mr. Robertson, during your experience in
18 conducting political polls, have you had occasion to poll
19 the electorate in Dallas County on the question of whether
20 they prefer single member districts or whether they prefer
21 multimember districts?

22 A Yes, on a number of occasions.

23 Q Did you testify before the Legislative
24 Redistricting Board about the results of these polls?

25 A Yes, I did.

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Q Would you please describe to the Court what the results of those polls were?

A There were three that basically were involved, because they were property of litigants appearing before the Board, and those are the ones to which I was able to refer. The first one was one which was conducted in what was then the 23rd Senatorial District, basically that part of Dallas County which is southwest of the Trinity River, and that was conducted, as I recall, late in 1963 or very early in 1966, and at that point in time the division among those voters was relatively close with 41 percent at that point saying they preferred single districts, 39 percent saying county-wide was better, and 20 percent saying they had no opinion.

Then subsequently, we had an opportunity to conduct one in the 16th Senatorial District, which extended all the way from Richardson, which is the extreme northeast part of that yellow area there (indicating), and it kind of swings down the east side of the county and is more or less analogous to the county as a whole by being somewhat more Democratically inclined than the county as a whole would be, and at that particular point in time, there were nearly six in ten, 58 percent who said they wanted individual districts. Three in ten or 31 percent said

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2 they would prefer to have it county-wide. Three percent
3 said it didn't make any difference to them and eight per-
4 cent had no opinion.

5 And then subsequently, late in 1968, we had
6 an opportunity to do it on a county-wide basis, this being
7 done for the Republican Executive Committee.

8 At that particular point in time again 61
9 percent said individual districts; 27 said county-wide; two
10 percent said no difference; nine percent said no opinion.

11 JUDGE GOLDBERG: Is this a county-wide
12 sample?

13 THE WITNESS: This is a county-wide
14 sample, yes, sir, representative of the
15 registered voters of Dallas County.

16 JUDGE GOLDBERG: And you use scientific
17 sampling methods?

18 THE WITNESS: Yes, we do, we use modified
19 probability samples, the same thing used by
20 George Gallup and a variety of others in
21 the industry.

22 JUDGE GOLDBERG: In a county-wide survey?

23 THE WITNESS: In a county-wide survey,
24 yes, sir, and that basic trend and tendency
25 has continued, you know, up to this time.

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2 Q That is approximately three to one in favor
3 of single member districts, as opposed to multimember
4 districts?

5 A Among those who make a decision, yes.

6 Q Yes, and you say in polls taken since that
7 time that they have continued to show the same trend?

8 JUDGE GOLDBERG: Pardon me just a moment.

9 MR. CROUCH: Yes.

10 JUDGE GOLDBERG: When you posed the ques-
11 tion for polling purposes, does your file
12 reflect how you phrased the question?

13 THE WITNESS: Yes, it does.

14 JUDGE GOLDBERG: I would like to hear
15 it.

16 THE WITNESS: All right. In the final
17 one, for example---.

18 JUDGE GOLDBERG: Yes, that's what I want
19 to know.

20 THE WITNESS: The question was asked in
21 this way.

22 "As you noticed --" and what we had done
23 here was to give them a ballot which listed
24 all of these people in this particular survey,
25 so that they had had a chance to study the

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Presidential and all the state-wide or the major state-wide offices, the Governor, Lt. Governor, Attorney General, the Congressional races.

"As you noticed, Dallas County voters will choose 15 members for the Texas House of Representatives this year. Some people think each member should be elected from his own individual district. Some think he should be elected by the whole county. In your opinion which is better, individual districts or county-wide?"

Q Mr. Robertson, from the surveys that you have made and in your opinion do the people that reside within the census tracts that make up the area of the alleged definable republican majority, do they share in a common life style and have the same socio-economic similarities?

A Oh, very definitely. Dallas County largely has been developed along very regular and rational lines from the point of view of land developers. The people in North Dallas, as we refer to it, which includes Richardson and Carrollton and so on, with certain exceptions that turn up as pockets here and there, basically, are those people in Dallas County who have the highest incomes. They are the

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2 people who have the best educations. You will find more
3 college graduates per capita in this area than in any place
4 else in the county. You find very, very few blacks, although
5 there are some in this area. You find little or no labor
6 union membership in this area. This is a class of people
7 who are officials, managers, proprietors, business men. The
8 home styles, the housing levels, the whole pattern is one
9 basically of relative affluence. This is the affluent
10 area of Dallas County, and as you move south from there,
11 you move into certain, again, well-defined areas which are
12 predominantly working people. Other areas that are prepon-
13 derantly black people. This is the basic pattern of the
14 way the county has been developed on a large scale basis,
15 and people live in definite neighborhoods, so to speak, with
16 a definite life style and community of interests. In that
17 sense---.

18 MR. CROUCH: Pass the witness, Your
19 Honor.

20 JUDGE GOLDBERG: Cross?

21 MR. RICHARDS: No questions.

22 JUDGE GOLDBERG: Mr. Luna?

23 (No omission here.)
24
25

Cross - Robertson

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Q Mr. Robertson, does affluency make any difference, then, in what you have referred to, then, as a life-style?

A Well, I think affluence makes a definite difference in a person's life-style, yes.

Q Now, with particular reference to the Richardson area, the people who live in the Richardson area, when did you take that poll?

A Which poll?

Q The last poll, the one you were reading from?

A The last poll I took in this area was completed, oh, about a month ago or so.

Q About a month ago?

A But the one we referred to here -- this was conducted -- this particular thing was in September I believe, of 1968.

Q Of 1968?

A But that was county-wide.

Q Now, isn't there a considerable difference in the affluency of that area this year as distinguished from 1968?

JUDGE GOLDBERG: What area?

Q This area that you have talked about

1 Cross - Robertson

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2 in the north Dallas Area -- that you have talked about
3 being Republican.

4 A I don't know of any reason to draw that
5 conclusion.

6 Q Well, let me ask you this; haven't
7 we had in that area a huge layoff of highly qualified
8 and highly educated people to the extent that there are
9 a lot of them in that area in north Dallas right now who
10 can't find a job because they are over-educated?

11 A There is some problem in that respect,
12 Mr. Luna. Although, much of that exists, perhaps, more
13 in your community than in the area that I am designating
14 here. I think there is more concern about that in some
15 areas of Garland than in this alleged Republican area.
16 But, the survey data indicates there is less concern about
17 that, as of this point of time, than there was, say, in
18 November of 1970.

19 Q I see. All right, sir. Now, the
20 people, you said, are as they act. Now, do you not
21 recognize that we have at least Republicans and Democrats
22 and independents in Dallas County?

23 A Yes. We asked them all the time.

24 Q So, then, didn't you find that in 1970
25 in both the primaries, the Republican and Democratic

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primary, that out of 493,000 registered voters in the primary, we only had a total of approximately 146,000 voted in both primaries?

A I don't remember the exact figures. I do know it was something less than a third of the electorate.

Q Well, the Hansen -- Harborough race in the Democratic primary had -- would it be fair to say the largest number of votes of any race in the Democratic primary?

A I rather suspect that it did; I don't recall. The turnout in that race was approximately 25 percent of the electorate.

Q About 126,000 to be exact, wasn't it?

A That is in the ball park ballpark.

Q And in the Republican primary in 1970, the vote, the total vote, was approximately 20,000, was it not, sir?

A I don't recall, Mr. Luna. But, the Republican primary was so no-hum I don't know why anybody--

Q Yes. All right. But, you would say that 20,000 was approximately right for the Republican primary, wouldn't you? Does that sound about right?

A Yes, that sounds about right for that

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2 particular year.

3 Q Now, then, in the general election in
4 1970, wasn't there, in fact, approximately 300,000 people
5 who turned out to vote in the general election?

6 A Now, you are talking in figures that
7 I am not accustomed to thinking in terms of.

8 Q Aren't they significant?

9 A I work in percentages and I will just
10 have to look. The figures that I have here indicate that
11 in the Senatorial race in 1970 -- no, that is for this
12 area rather than for the whole county. In this area there
13 were 137,000 roughly.

14 Q Just in that one area?

15 A In that area, that is correct.

16 Q So, you would agree that about 300,000
17 in that area is about right, approaching 300,000 for the
18 whole County, wouldn't you?

19 A That would make about 60 percent,
20 wouldn't it?

21 Q Yes, sir.

22 A Roughly, approximately, give or take
23 a few percentage points. Yes.

24 Q So, then, we had substantially more
25 than half of the population in Dallas County that didn't

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2 vote in any party primary, didn't we?

3 A Well, yes. That is always the case.
4 In fact, it is growing more and more that way.

5 Q All right. So, then as a political
6 analyst and political expert, wouldn't you say that the
7 majority of the voters there for Dallas County, rather
8 than being either Republican or Democratic, are Independent?
9

10 A That depends very much on what we
11 mean when we say "Independent", Mr. Luna. If by
12 "Independent" you mean neutral, then the answer is no.
13 Independent in Texas has a very definite political
14 connotation, because of the development of Texas history.
15 People have become independents in Texas, which once was
16 a solid Democratic state, out of disgust with the Democratic
17 Party -- and that means anti-Democrat, but not ready to
18 be Republican.

19 Q Let's assume that Independent means
20 that they don't belong to any political party. If that
21 is what it means, then, wouldn't you agree with me that
22 the majority of the people in Dallas County are
23 Independents?

24 A This is possible. But I think the
25 thing we are getting at here, there is no statement here

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2 that people in this area are entitled to representative
3 because they are Republicans. What is being said here
4 is that the people in this area, no matter what they are,
5 are entitled to elect Republicans if they wish to --
6 and they consistently have expressed the wish to do so.

7 Q Perhaps I misunderstood you, but I
8 did understand you to say that the first Republican to
9 run for the Legislature ran in 1958?

10 A No, I don't think I said the first
11 Republican to run for the Legislature. I stated the
12 first time the Republican Party -- and I realize this is
13 open to debate -- but the first time the Republican party
14 ran candidates for the Legislature.

15 Q The first time the Republican party
16 ran candidates for --

17 A That is correct.

18 Q Is that what your research shows the
19 way it happens in the Republican party, is that the party
20 runs them, or that folks announce for the Republican
21 party when they care to?

22 A This is the first time the Republican
23 Party -- Well, look. Let's go back -- and I realize
24 what you are referring to. I am well aware that in 1950
25 that because of the trauma of the Democratic primary in

1 Cross - Robertson

2 which Wag Reed was elected and people felt it was over
3 the confusion of W. O. Reed not being elected, he was
4 retiring, that many of the people downtown became extremely
5 upset. And, as a result, they talked with the Republican
6 Party leaders, and Edward T. Dickar ran as a Republican
7 and with the full support of the Downtown businessmen,
8 and both newspapers and he was elected and he served one
9 term and he resigned and didn't run again. In my mind
10 he was not a candidate of the Republican party; this was
11 a put on.

12 Q But he was nominated by the Republican
13 party, was he not?

14 A He was nominated by the Republican
15 convention for that purpose at that time, and he didn't
16 come back again and we didn't hear any more from him until
17 he became chairman of Republicans for Johnson movement
18 in 1964.

19 Q Is that kind of like Curtis Graves
20 being Chairman of the Democrats for Bush in 1970?

21 A I don't know anything about Mr. Graves'
22 activity in that respect. It seems to me he has a
23 continuity of political behavior, though.

24 Q Are you also aware that County-wide
25 the Republicans elected, in a County-wide district,

1 Cross - Robertson

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2 Congressman Bruce Alger for a period of about 10 years,
3 beginning about 1954.

4 A Yes. And, I am also aware that in
5 1954 and 1956 and 1958, he too, enjoyed an overwhelming
6 support from both newspapers and the downtown establish-
7 ments, if you want to call it that.

8 Q So, from a political analyst stand-
9 point, would it be fair to say that whatever the method
10 of seeking office, whether it is by single district, or
11 otherwise, one needs to have the support of an organiza-
12 tion to help him to be most successful?

13 A Well, one always needs the support of
14 an organization; the question is, how much. And, the
15 bigger the area, the more money you have to have, and
16 therefore, the more dependent you are and you can also
17 exercise your own judgement.

18 Q You don't deny that Congressman
19 Bruce Alger behaves like a Republican, do you?

20 A There is a value judgement that is
21 being expressed in that, that I don't want to comment on
22 one way or the other.

23 Q Well --

24 A As far as I understand, Mr. Alger
25 behaves in his own way and the political circumstances

1 Cross - Robertson

8:4

2 developed as they did.

3 Q Well, you told us that Mr. Dicher --
4 you didn't consider as being a Republican, do you?

5 A I didn't say that. I don't consider
6 that Mr. Dicher was really run by the Republican --
7 the Republican party wasn't viable at that time. If you
8 remember, Democrats used to go before the Republican
9 County Convention and ask for their endorsement.

10 Q Who hired you to make this poll?

11 A To make which poll?

12 Q The poll you just -- that you just told
13 the Court about?

14 A The ones to which I have referred,
15 one was conducted for the Republican executive committee,
16 one was conducted for Senator Mike McCall and one was
17 conducted for Senator Maury. But, I have done polls for
18 a lot of people, as you know.

19 Q Are you also aware of a Republican
20 who was elected County Court at-Large Judge, County-wide,
21 being the Honorable Grover Hart?

22 A Yes, I am.

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Q Do you know when that was?

A As I recall, that was in 1952.

That was the year all the Democrats cross-filed and everybody on the Republican Ballot -- What happened in Dallas County when the Democrats for Eisenhower movement headed up by Governor Shivers, and all the favorite State officials who were then in office, -- In fact, there were only, as I recall, three local Democrats who were not in the Republican column, two of whom refused, Judge Sara Hughes and Barefoot Sanders, and there was the Judge who could not cross-file, because Grover Heart had already filed, and the people voted for that Republican slate on mass. I don't think they ever knew they elected Heart.

Q You were not aware, then, that the Dallas Bar Association in a poll endorsed, among the judicial candidates, Grover Heart?

A I am not at all surprised. I think he would have deserved it.

Q So, that isn't what you are saying --

A I am saying this is an unusual situation, you realize?

Q What you are saying, in your opinion he was a better qualified candidate for that office than his opponent?

Cross - Robertson

8.6

I don't think the electors ever knew whether he was or not.

Q I am asking you what you know?

A I don't -- didn't know his opponent.

Q Well, I understood you to say you thought he deserved it and I was trying to find out the basis.

A I think he is a well-qualified man. I don't see why they shouldn't endorse him.

Q Mr. John Bryant, was he also elected Judge of the County Court at Law in a county-wide election?

A In 1962, he was.

Q In 1962?

A Yes.

Q That was 10 years after Grover Hart. Now, was Mr. Grover Hart elected again after his first term?

A I believe he was elected to a second term, but they cross-filed again that year, too.

Q Now, he never was cross-filed on the Democratic ticket, was he?

A The Democrats cross-filed under Eisenhower.

Q I am talking about Grover Hart.

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A He didn't file as a Democrat, no.

Q And, so, if somebody else cross-filed, it didn't have anything to do with Grover Heart, did it? I didn't hear your answer.

A I lost the essence of your question.

Q My question was, you have mentioned cross-filing that year. My question was: did cross-filing have any application in Heart's race?

A Well, in my judgement -- In the first instance, it elected him. From my memory at this point in time, I cannot say whether Grover Heart had opposition the second time he ran. I don't recall the circumstances surrounding his second election.

MR. LUNA: Thank you, sir.

JUDGE GOLDBERG: Anybody else?

MR. MEDANIEL: No questions, your Honor.

MR. CROUCH: That is all we have, Your Honor. We would like to call Representative Fred Agnich.

FRED AGNICH,
a witness called by Mr. Crouch, after having been first duly cautioned and sworn to testify the truth, the whole

1 Direct - Agnich

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2 truth and nothing but the truth, testified as follows:

3
4 DIRECT EXAMINATION

5
6 Questions by Mr. Crouchi

7 Q Representative Agnich, would you state
8 your name and tell the Court where you reside?

9 A Fred Agnich, 6033 Melody Lane, Dallas.

10 Q Are you now serving as a member of the
11 Texas Legislature?

12 A I am.

13 Q When were you elected?

14 A In November of 1970.

15 Q And you are serving as a Republican
16 member of the legislature from Dallas County, is that
17 correct?

18 A I am.

19 Q Prior to your having become a candidate
20 to the legislature, in 1970, Mr. Agnich, would you
21 describe briefly your background in Dallas County and
22 tell the Court how long you have been a resident of Dallas,
23 about the civic involvement, how you have been involved
24 in civic affairs.

25 A Well, I have been a resident of Dallas

1 Direct - Agnich.

8 9

2 and worked out of it since 1937, and I was engaged
3 in the building of what has now become a great corporation,
4 Texas Instrument. And, in the course of that, I became
5 involved, of course, in civic endeavors. I was vice-
6 chairman of the Aviation Committee for the Dallas Chamber
7 of Commerce when we built the present Love Field terminal.
8 Then, I have worked, I guess since then, in approximately
9 I suppose, a hundred charitable drives of all kinds,
10 being on the board or raising money. I was a member of
11 the Board of Governors and Chairman of the Board of
12 Governors of Green Hills School for a period of eight
13 years, when we built the modern campus there. I guess I
14 have been involved in almost every political activity
15 you can think of. I was one of the leaders in the fight
16 for the crossroad bond program for the City of Dallas.

17 Q Have you also been active in the
18 Dallas Petroleum Club?

19 A Yes.

20 Q And served as an officer of that club?

21 A I am currently a director of that
22 club.

23 Q Mr. Agnich, have you also during this
24 period of time been involved in politics or had some
25 appearance in politics prior to your becoming a candidate?

1 Direct - Agnich

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2 A Yes, sir. I first became involved
3 in politics in the first Nixon campaign when I was
4 Chairman for a fund-raising dinner for Mr. Nixon.
5 Subsequently, I became involved in particularly the
6 finance end of the Republican party in Dallas County. I
7 was, for instance, Chairman for John Tower in Dallas
8 County. I was Dallas County Goldwater Chairman in 1964.
9 I was Dallas County Republican Chairman for about two
10 and a half years. I am currently a member of the State
11 Republican Executive Committee, as District Committeeman,
12 from the 8th Senatorial District. I could hardly name
13 all the political activities I have been engaged in.

14 Q Is it safe to say that during your
15 many civic and political activities that you have had
16 considerable exposure to the community and have been on
17 television on several occasions and are well-known through
18 the committee and the community leaders?

19 A I think you can make that statement,
20 yes, sir.

21 Q Mr. Agnich, when you became a candidate
22 for the Legislature in 1970, do you recall how much you
23 spent -- or let me -- strike that question. And let me
24 get into another line of questioning first. Prior to
25 becoming a candidate to the Legislature, you were also

1 Direct - Agnich

2 the County Chairman for the Republican party in Dallas
3 County? 811

4 A Yes.

5 Q Did you have occasion during that
6 time to -- were you involved in the recruitment of
7 candidates for the Republican Party?

8 A I most certainly was. This consumed
9 a large part of my time, in trying to find a good
10 candidate whom I felt and the party felt could be elected
11 and who, if elected, would do a good job as an elected
12 public official.

13 Q Did you specifically become involved
14 in the recruitment of candidates for the State Legislature
15 of Dallas County?

16 A Yes. This was one of my more difficult
17 tasks.

18 Q And, did you find that County-wide
19 districts -- a multi-member county-wide district -- was
20 an asset to you in recruiting candidates and getting
21 people to run for office?

22 A No. On the contrary, it was a great
23 handicap, and if I might interject here, prior to the
24 1970 filing date, I made a great effort to put together
25 if you will, a slate of candidates for the State

1 Direct- Agnich

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2 Legislature who would -- I wanted to get men who were
3 well known in the community who were men of substance, who
4 had been successful in whatever endeavors they had engaged
5 in, because I wanted to try to show the people that we
6 indeed had a group of responsible men, and I simply
7 couldn't get anywhere, because the task was simply not
8 worth it. The magnitude of the task was not commensurate
9 with the magnitude of the petition.

1 D. B. - Agniah

2 Q Would you say that in your opinion it
3 was easier to recruit candidates for the State Senate
4 and candidates for the State Congress than it was to
5 recruit candidates for the state legislature?

6 A Oh, definitely, yes it was.

7 Q Was the biggest deterrent the tremendous
8 sums of money that would be required to run for the
9 state legislature?

10 A It most certainly was.

11 Q And the extensive use of television was
12 the basis for that cost?

13 A Yes.

14 Q Mr. Agniah, after you became a candidate
15 for the legislature in 1970, were you a part of or
16 were you aware of the study that was made on behalf of
17 the twelve Republican candidates for the state legis-
18 lature by the firm Van, Chronkite and Malloy?

19 A I was aware of it, yes.

20 Q Would you briefly tell the Court the
21 purpose of that study and what it involved?

22 A Well, the purpose of the study was
23 designed to find out whether or not the Republicans
24 could field a slate of candidates for the state legis-
25 lature that could win against against the corresponding

1 D. E. - Agniah

2 or the opposing slate fielded by the Democrats. We
3 wanted to know if this could be done, and if so, what
4 kind of a campaign would have to be run and how much
5 would it cost.

6 Q Now, is it safe to say that the firm of
7 Van, Chronkite and Malloy had, prior to that time, been
8 used exclusively by the Democratic Party?

9 A I don't know of any other case before
10 that where they had worked for the Republican Party or
11 a Republican candidate. They may have, but I don't
12 know about it.

13 Q Now, you are familiar, are you not, that
14 the firm was involved with the "Fifteen for Dallas"
15 campaign for the Democratic legislative candidates in
16 preceeding years?

17 A Yes. And since the "Fifteen for Dallas"
18 had won in preceeding years, it was obvious that it
19 would be best to go to the people who had advised
20 them in that race.

21 Q Did you recall what the proposed budget
22 or the budget proposals that were submitted by that
23 firm were as a result of that study?

24 A Yes. I recall generally what the
25 substance of the report was. It was "Yes, you would win".

1 D. E. - Agnish

2 given a lot of circumstances, but in order to do that,
3 the optimum budget required, as I remember it, was
4 something in excess of \$220,000.00 and the absolute
5 minimum would be, if I recall, \$162,000.00. But that
6 in addition to that, it would be expected that each
7 candidate-- and I was to be one-- would be expected to
8 raise money for his own race and I believe that those
9 figures did not cover any additional costs in the way
10 of staff personnel or materials that the party, itself,
11 might have to have in conducting such a campaign.

12 Q Mr. Agnish, how much did you personally
13 spend on your campaign for the legislature in 1970?

14 A As I recall the figure, right at
15 \$31,000.00. It could be a few dollars more or less,
16 but I think that is within a hundred or two of what it
17 cost.

18 Q Would you consider that you were a
19 typical candidate or let me put it another way, do you
20 think that a candidate that had not had your background
21 of involvement in community affairs and in political
22 activities and had the name identification that you had
23 at the time that you became a candidate could run an
24 effective campaign for that same price?

25 A I doubt that he would have been successful

1 D. E. - Agniah

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2 because the circumstances were unusual and you want to
3 remember that my friends don't exactly call me a land-
4 slide, because of the 247,000 votes cast in that race,
5 I won by only 730.

6 Q Mr. Agniah, did you also, during the course
7 of that race, have the endorsement of the famous
8 committee that has been the subject of so much testimony,
9 the DCRG, the Democratic Committee for Responsible
10 Government?

11 A Yes. I had their endorsement, which I
12 welcomed.

13 Q Did you have the endorsement of both
14 newspapers?

15 A I had the endorsement of both major
16 newspapers, the Oak Cliff Tribune and several other
17 papers around the town.

18 Q Did you have the endorsement of Mr. Joe
19 Rich, one of the former Democratic County Chairmen?

20 A A very discerning Democrat, he did
21 endorse me.

22 Q Mr. Agniah, you think you could have won
23 in 1970 or been elected in 1970 had you not had the
24 endorsement of the DCRG?

25 A I think it would have been very difficult

1 D. E. - Agnish

2 for me to have won that race in view of the narrow
3 margin. I would have to speculate as to how much that
4 amounted to, but certainly it was a significant factor
5 in my election.

6 Q Mr. Agnish, in serving in the legislature,
7 once you were elected to the legislature, have you had
8 any difficulty in representing adequately, to your
9 mind, a population of 1,300,000 people?

10 A Well, I personally feel that I was
11 inadequate in-- because I feel that if you are going
12 to represent your constituency well, you must communicate
13 with them. You must have a closeness of communication
14 both ways. In view of the staff that we had--

15 Q --What was that staff?

16 A Pardon?

17 Q Excuse me for interrupting, but what kind
18 of staff?

19 A Well, we are allowed a full-time person
20 and then what we call a half-- part-timer. But that
21 was grossly inadequate, in view of the thousands of
22 letters received, that I had to hire additional staff
23 people on my own personal expense to attempt to handle
24 the letters. But there just wasn't any way to really
25 do it.

1 D. E. - Agnish

2 Q You hired out of your own and paid for
3 out of your own pocket the additional secretarial staff?
4 Is that correct?

5 A Yes. Not only my own secretarial, but
6 legal aid and some additional office space. The Democrats
7 for some reason, didn't give me the most spacious office
8 in the Capitol, and I had to go outside to hire better
9 quarters.

10 Q Do you think this additional expenditure
11 was necessary to do your job adequately?

12 A Yes, it was. May I interject something
13 here? You see, being the only Republican, all Republicans
14 in Dallas County felt that I was their chosen represen-
15 tative, and so they never communicated with any of the
16 other representatives and in addition to that, because
17 of my other previous civic activities, I was contacted
18 I guess by every municipality and governing board,
19 school districts and everyone else for my help in
20 whatever problem might be.

1 D. E. - Agnish

2 Q Mr. Agnish, in serving in the legislature,
3 have you noticed any difference in responding to
4 constituents' needs regarding whether they lived in
5 a home rule city or not?

6 A No, I did not.

7 Q That has not been a factor in whether
8 you have been effective or not?

9 A I don't believe so, because I cannot
10 think of a single day that went by while we were in
11 session in which I did not receive at least several
12 letters, one telephone call or personal visit by
13 some official of one of the various municipalities,
14 whether they were home rule or not.

15 Q Would you characterize all of the
16 problems you were called upon to deal with in the
17 legislature, "statewide problems", as opposed to
18 local problems?

19 A No. There certainly were a great many
20 local problems as well as statewide.

21 Q Mr. Agnish, I am asking Mr. Bass to
22 hand you what has been marked as DR Exhibit 9.

23 A All right.

24 Q Are you familiar with that map?

25 A Well, I am familiar with one very much

D. E. - Agniah

like it. Let me see and make sure it is the same one.

I have not seen this before, but I was given one like that except it was my race and this is Representative Dick Reed. I am familiar with the coloring system.

Q That map was prepared by the County Clerk's Office? Is that correct?

A Yes. It is correct.

Q In Dallas?

A Yes.

Q And it was prepared for the purpose of assisting you in determining or in reapportioning the legislature, senatorial, congressional and state representatives, I presume?

A I have no idea why it was given to me, Mr. Crouch. I accepted it gratefully because it contains very valuable information.

Q It does show the per cent of Democrat and Republican by precincts? Is that correct?

A It does. I think generally the brown areas, the dark brown represent those areas of-- where Representative Reed in the precinct got eighty per cent or more of the vote, and the green, sixty to eighty, and the blue, forty to sixty and the orange, twenty to forty and the white would be less than twenty.

1 D. E. - Agnish

2 Q And the orange, if it indicated twenty
3 to forty per cent Democratic, would probably mean sixty
4 to eighty per cent Republican? Is that right?

5 A Yes. I think so.

6 MR. COUCH: That's all. We pass the
7 witness, Your Honor.

8 JUDGE GOLDBERG: Cross examination?

9 CROSS EXAMINATION

10 Questions by Mr. Luna:

11
12 Q Mr. Agnish, these-- the map that you
13 just talked about, those maps were prepared to show
14 what the vote was in a particular race, rather than--

15 A --That's right. As I understand it,
16 there was a separate map made for each of the members
17 of the House. I didn't know before that there were.
18 I know I got mine and I assume the others did.

19 Q And therefore, of course the percentage,
20 Democrat and Republican, is not the same on hardly any
21 other maps, is it?

22 A Well, there would be some difference, yes.

23 Q Yes. Mr. Agnish, there is not much
24 question in your mind but what you can get elected in
25 Dallas County to the legislature, countywide, any year

1 C. E. - Agniah

2 you are ready to run, is there?

3 A Well, thank you, Mr. Luns. I appreciate
4 that--

5 Q --That is a question and not a statement--

6 A --votes of confidence. But I would hope
7 that would be so, but I don't know.

8 Q All right. Now, if you feel that is so,
9 Mr. Agniah, you have told us how you worked in the
10 civic drives in other areas of the community and got
11 yourself known.

12 A That's right.

13 Q If other Republicans would do the same
14 thing and if there is one-- they are as well-qualified
15 as you, is there any reason that other Republicans couldn't
16 also be elected, as somewhere in 1962?

17 A Yes. I think there is always a
18 possibility that one could be elected, because I was.
19 I do want to point out to you, though, that if a require-
20 ment for election to the office of state representative
21 means you first spend twenty years in intensive public
22 civic endeavoring work, you are putting some pretty
23 serious qualifications upon that job.

24 Q Well, there are a lot of people in the
25 legislature from Dallas County who have not done that,

1 C. S. - Agnish

2 aren't there, Mr. Agnish?

3 A They are not Republicans.

4 Q Were there any elected in 1962 who had
5 worked twenty years in civic activities?

6 A I don't know. I don't believe so.

7 Q So then is it your feeling that it is
8 any more difficult for a Republican to become known in
9 Dallas County than it is a Democrat or do they have the
10 same problem in becoming known?

11 A No. I think that whether you are a
12 Republican or a Democrat, if you are talking of areas
13 outside of political areas, there is no difference. I
14 think the political area, there might well be a difference.
15 I suspect it would be easier for a Democrat because of
16 the relation concept and the type of financial backing
17 and race and the voting for the slate, you see, does
18 not require that there be name identification.

1 CE - Agnich

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2 BY MR. LIMA:

3 Q Mr. Agnich, based on your experience as
4 Republican County Chairman, would it be fair to say that
5 there are more people in Dallas County who -- more quali-
6 fied voters in Dallas County who don't participate in
7 either party than participate in both of them combined?

8 A Well, I would say that is somewhere -- I
9 am not sure of the exact figures, but you would be close,
10 yes, I think that is right.

11 Q So then, would it follow it is fair to say
12 that the voters in Dallas County, rather than being either
13 Republican or Democratic are predominantly independents?

14 A Well, there is a great independent element
15 in the county, but I think that there are far more so-
16 called -- I suppose you would call them consistent Demo-
17 crats than they are consistent Republicans, or there are
18 more of them, because more vote in the Democratic Primary,
19 although I recognize there are other factors involved there.

20 Q Mr. Agnich, did you author any legislation
21 in -- well, you have been there one session?

22 A That's right.

23 Q Did you author any legislation while you were
24 there?

25 A Yes, one piece which I co-authored with

1 CE - Agnich

2 Representative Tom Christian, but in another case in which
3 I resurrected a bill that came from the Senate, Senator
4 Kennard, and I rewrote it. The original bill was this
5 big (indicating), and I completely re-did it. It was about
6 20 pages long. It was easier to carry it under his name.
7 It passed both Houses without a dissenting vote.

8 Q So then, although it was a predominantly
9 Republican Legislature -- pardon me -- predominantly
10 Democratic Legislature---.

11 A Right.

12 Q ---you were able to get your bills passed,
13 the only two you authored?

14 A No, no, no. You didn't say passed. You said
15 authored.

16 Q My question was authored. Did they not pass?

17 A The first one did not. No, sir, that was
18 killed in Committee. It got in Bill Neatly's committee.

19 (LAUGHTER)

20 Q So you authored two bills. One of them passed,
21 the other one didn't?

22 A That's right.

23 Q Not a bad batting average, is it?

24 A No, it is not. As a matter of fact, I will
25 say that the Democratic members of the House universally

1 CH - Aguish

2 treated me very well, indeed. I have no complaint.

3 MR. LUNA: Thank you very much.

4 JUDGE GILBERT: Further examination?

5
6 EXHIBIT EXAMINATION

7
8 BY MR. CROUCH:

9
10 Q Mr. Aguish, you asked about the independents
11 voting.

12 Is it not true in your experience as
13 County Chairman that we have had at Republican Headquarters
14 a lot of volunteers on canvasses who did not vote in either
15 party primary?

16 A That's right.

17 Q But still worked for the Republican candi-
18 dates in the fall and November.

19 Do you consider those Republicans?

20 A I do.

21 Q Also in asking about the optimum and mini-
22 mum budget that was suggested by Van, Krumholtz and Malloy,
23 I failed to ask you, do you know whether that sum was spent,
24 \$227,000.00 or \$160,000.00 was spent, on behalf of the
25 slate?

100 - Agnich

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2 A No, as a matter of fact, it frightened every-
3 one so badly, we completely abandoned that proposed course
4 of action. There was just no way we could raise that
5 kind of money.

6 MR. CROUCH: I have no further questions.

7 JUDGE GOLDBERG: Any questions, Mr. Curry?

8 MR. CURRY: No questions, Your Honor.

9 JUDGE GOLDBERG: Mr. McDaniel?

10 MR. McDANIEL: No, sir, I have no questions.

11
12 EXAMINATION

13
14 BY JUDGE GOLDBERG:

15
16 Q Mr. Agnich, I would like to ask a question
17 or two, if I may.

18 Did you appear before the Legislative
19 Redistricting Board?

20 A I did.

21 Q Tell us about your experience.

22 A I appeared before the Board in my capacity
23 as a member of the State Republican Executive Committee.
24 I represented the Republican Party of Texas. I did present
25 to that Board a single district plan for all of the 150

1 RED - Agnich

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2 districts within Texas, and detailed maps are given of
3 each of the large metropolitan areas, including the
4 whole state, and the population differential was extremely
5 low. They work very close, and in no case did we violate
6 the State Constitution with respect to county lines, and
7 as nearly as possible, all of the districts were compact
8 and contiguous, and we tried to take into account ethnic
9 and other relationships, communities, if you will.

10 Q Did you also present a plan for senatorial
11 districts?

12 A No, I did not.

13 Q Just for the house?

14 A Because that was the area I was familiar
15 with.

16 Q One more question.

17 A Yes, sir.

18 Q You believe, of course, as you have said,
19 in single member districting?

20 A I do.

21 Q Would you enumerate for the record the
22 elements which you think should go into the determination
23 of what should constitute a legislative district?

24 A Yes. I think, of course, the first thing
25 we have to do under the one man-one vote rule—

1 RED - Agnich

823

2 Q Yes.

3 A ---that we understand the district must
4 be as nearly---

5 Q Numerically equal?

6 A ---numerically equal as possible.

7 I think secondly that those districts should
8 be, where possible, compact and contiguous. In other
9 words, we don't want the reptilian aspect, if we can
10 avoid it. They should represent, as well as possible,
11 a like community of interests, whether that be ethnic,
12 whether it be social or whether it be economic.

13 I might, if I may, I drew up a plan for
14 Dallas County with 15 individual districts. Representative
15 Dick Read drew up a plan of 15 individual districts. Repre-
16 sentative Ian Holmes drew up a plan of 15 individual
17 districts. This was not done in collaboration, and these
18 were entirely independent, and when we compared them, there
19 was strikingly little difference, and any one of the three
20 of us would have accepted the plans of the other. There
21 was no attempt to gerrymander, and we found that Dallas
22 County, the various cities, it was very easy to draw
23 districts which would incorporate, say, Garland or Grand
24 Prairie, Irving or Carrollton, Farmers Branch.

25 JUDGE GOLDBERG: Thank you.

1 RED-4 Agnich

DELTA 830

2 THE WITNESS: I think these are the things
3 I believe in.

4 JUDGE GOLDBERG: Any further questions?

5 You may step down.

6 (WITNESS STANDS ASIDE.)

7 JUDGE GOLDBERG: Let's take a ten-

8 minute recess.

9 (REPORTER'S NOTE: The Court then,

10 at 8:42 o'clock, P.M., January 3,

11 1972, recessed until 3:52 o'clock,

12 P.M., the same date, at which time

13 it reconvened.)

14 JUDGE JUSTICE: Please be seated.

15 JUDGE GOLDBERG: It may be a poor time

16 to say this, but we are deeply grateful for

17 the cooperation that we have received up to

18 date, and our honest prayer is that it will

19 continue, so we can end it very soon.

20 Proceed, now.

21 MR. CROUCH: I would like to call the

22 next witness, Mr. John Knappe, E-N-A-G-G-S.

JOHN KNAGGS,

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a witness called by Republican Intervenor, having first been duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATIONBY MR. CROUCH:

Q Mr. Knaggs, would you state your name and where you reside?

A John Knaggs. I reside at 3703 Hillbrook in Austin.

Q What is your business or profession?

A I own a public relations firm that specializes in political campaigns for Republican candidates.

Q What is your educational background and experience?

A I have a Journalism Degree from the University of Texas here in Austin. I worked on three newspapers before becoming United Press International correspondent in the State Capitol Bureau where I covered the Legislature in various political campaigns. From there I

DE - Knaggs

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became Public Relations Director for the Republican Party of Texas. That was in 1963, four years there working as a political consultant on various campaigns state-wide, congressional, legislative, and from there into private public relations business to the present.

Q In 1966 did you have occasion to work on Senator Towers' state-wide campaign?

A Yes, I did.

Q And as a result of that experience traveled all over the state?

A Yes, I did.

Q And since you had your own firm, Mr. Knaggs, have you been retained by the Republican Party to work with legislative candidates in 1970 and 1972?

A Yes.

Q Would you state the nature of that retainer and exactly what you have been employed to do?

A Well, our firm helps the local Republican organizations try to find qualified candidates to run for the Legislature and to advise them on the nature of the campaign they need to conduct, including media costs, organization, and so forth.

Q Did you do this, serve in this capacity in the 1970 campaign?

1 DE - Knaggs

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2 A Yes, I did.

3 Q As a result, had the responsibility of
4 coordinating campaigns which involved single member dis-
5 tricts and some multimember districts, some urban and some
6 rural?

7 A Yes, all types.

8 Q Now, did this also involve the question
9 of budgeting and advertising expenditures, placing tele-
10 vision spots and producing television spots, et cetera?

11 A Yes.

12 Q For these candidates?

13 A Right.

14 Q Now, have you as a result of this exper-
15 ience done a study, or do you keep abreast of the campaign
16 costs, for example, for Dallas County?

17 A Yes.

18 Q Have you recently prepared or done some
19 work in preparing budgets for some proposed costs for
20 the campaign in 1972 in Dallas County for candidates for
21 the Legislature?

22 A Yes, we periodically update media costs,
23 which are changing, and I do have current figures for
24 Dallas County, yes.

25 Q What in your opinion would it cost to run a

DE - Enaggs

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successful campaign for the Legislature in Dallas County?

A As one candidate?

Q Yes, as one candidate running for the Legislature.

A Well, I don't want to belabor this point.

Q Let me clarify that -- for the general election.

A For the general election, right, and I don't want to duplicate some of this previous testimony. I know that time is a factor.

The figure I have is based on prototype rather than individual candidates, and some things could change, depending on how well he appeared on television and so forth. But the figures that I have contemplate a general budget using the normal media and paraphernalia involved in the campaign totaled out to \$87,390.00.

Q In your opinion is television and radio and necessity to reach the Dallas market for a candidate on a multi-member county-wide district?

A I would say probably television might be considered essential. I am not sure about radio.

Q Is the cost of television in Dallas greater than in other areas of the state?

A Proportionately for a legislative race it is.

1 DE - Knaggs

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2 I know costs have been discussed a lot in this case, but
3 few people realize how fast these costs can escalate, as
4 relates to a legislative race, because the media costs
5 are predicated on the approximate number of viewers that
6 that station can determine, and in the case of Dallas you
7 pay an abnormally high cost, because you are paying for
8 viewership far beyond Dallas County only. You are paying
9 for Tarrant County and a great viewing audience beyond
10 Dallas, so your cost there is disproportionately high for
11 the amount of people you reach.

12 Q In other words, you are having to pay for
13 the cost of reaching viewers in Fort Worth and in Denton
14 and surrounding areas?

15 A That is correct, and, of course, this
16 occurs all over the state to some extent, but Dallas, I
17 would say, has a cost that is probably disproportionately
18 high compared to other districts.

19 Q Have you also done some work, Mr. Knaggs,
20 preparing budgets for prospective legislative candidates
21 in Harris County who in 1972 will run in single member
22 districts?

23 A I have discussed single member district
24 with one candidate in Harris County.

25 Q In your judgment is a race in a single

DE - 8366

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number district in Harris County -- is television a necessity---?

A No.

Q ---as far as campaign expenditure?

A No, assuming you have a candidate who is energetic who really wants to win and is willing to work and can engender support among friends and associates in the area in which he lives, I don't think television is necessary to his success.

Q Now, Mr. Luna alluded with one of our prior witnesses, I think, to -- I think he said if you had all 18 candidates running in one ad, you could run it cheaper in the Dallas News than if they ran 18 individual ads. If we had individual legislative districts in Dallas County, would in your opinion television be necessary and advertising in the Dallas Morning News and the Dallas Times Herald and the widely-distributed media necessary?

A Well, there are 17 weekly newspapers in Dallas County. If you don't use all those, you are pretty well forced to go into the dailies there, I think. There are three small dailies and then the Dallas Morning News and the Dallas Times Herald.

In my opinion, if I were to recommend a realistic budget in the present system, I think it would

1 DE - Knaggs

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2 be necessary -- I think it would be desirable to use the
3 News and the Herald, as opposed to using all the other
4 newspapers.

5 Now, again, you run into the problem here
6 of paying for more than you need, because the average
7 cost for the State of Texas in weekly newspaper per column
8 inch is \$1.12, according to the Texas Press Association.
9 The Dallas Morning News and the Dallas Times Herald's
10 rates now are beyond \$11.00 per column inch. Again, they
11 have to predicate those rates, and rightly so, on their
12 readership, which, particularly in the case of the Dallas
13 Morning News, is far beyond Dallas County.

14 Q Do you know of any reason to differentiate
15 between Dallas and Harris County, as far as single member
16 or multimember districts are concerned, Mr. Knaggs?

17 A Do I?

18 Q Yes.

19 A No.

20 Q Mr. Knaggs, now, you have testified concern-
21 ing the campaign costs. Am I correct in assuming -- or
22 maybe I should ask you, do you have anything to do with
23 filing the reports filed by the candidates in compliance
24 with the state election laws?

25 A No, I don't directly.

1 CE - Knapp

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2 he would also be faced with the same expense differential
3 between the single and the multimember district?

4 A Well, some kind of percentage, yes. Of
5 course, your media costs are not as high in Bexar County
6 as they are in Dallas, but, certainly the scale would
7 apply.

8 (No omission here.)

1 DE - Knaggs

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2 Q So, the figures you have been talking about
3 are purely from public relations and advertising standpoint,
4 and you are not familiar with the costs used by candidates
5 when they file their reports in compliance with the Elec-
6 tion Code. Is that correct?

7 A That's correct.

8 MR. CROUCH: Pass the witness.

9 MR. EASON: Nathan Eason from San Antonio.

10
11 CROSS-EXAMINATION

12
13 BY MR. EASON:

14
15 Q Mr. Knaggs, you have just stated that the
16 cost of conducting a single member district campaign in
17 Dallas County would be less than conducting a multimember
18 district campaign for the State Legislature. Is this
19 correct?

20 A Yes, sir.

21 Q Do you know of any reason why it would be
22 any different in San Antonio in Bexar County?

23 A No, I don't believe so.

24 Q In other words, it would still be more
25 expensive for a candidate seeking office in Bexar County,

C. E. - Knepps

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CROSS EXAMINATIONQuestions by Mr. Eason:

Q But, to some degree it would be detrimental to the person from a cost figure to run in a multi-member district election for the state legislature in Bexar County, as opposed to a single-member district in Bexar County, is that correct?

A Costwise there is no question about it in my mind.

Q You further stated a moment ago that you knew of no reason why Harris County should have single-member districts and Dallas County have multi-member districts, is this correct?

A No criteria that-- I mean, I don't know. No, I don't know.

Q Well, can you think of any practical reason, or any reason, why Harris County should have single member districts and Bexar County have multi-member districts?

A No.

Q The same answer would apply then, in both geographical situations-- or both metropolitan areas?

A Yes.

Q Were are you from originally, Mr. Knepps?

1 C. E. - Kneggs

2 A Cotulla, LaSalle County.

3 Q That is the county seat of LaSalle?

4 A Yes.

5 Q And, that would be the-- In the new
6 proposed 21 senatorial district, is that correct?

7 A I believe that is correct.

8 Q Are you familiar with Senate District 21
9 as passed by the Senatorial Redistricting Board on
10 October 15, 1971?

11 A I believe, if that is the district you
12 refer to, it goes into northern Bexar County. Then I
13 am familiar with the configuration of the district, yes.

14 Q All right, sir. How would you define
15 "community of interest"?

16 A I would say similar to what it has been
17 defined in previous testimony, economic interest,
18 social, ethnic and those considerations.

19 Q All right. How long did you live in
20 LaSalle County?

21 A I resided there seventeen years.

22 Q Do you feel that you are reasonably
23 familiar with the test that you put to socioeconomic
24 interest of the people in southwest Texas?

25 A Yes, sir.

1 C. E. - Kneggs

2 Q All right. From the guidelines that you
3 have laid down, or the criteria for community of interest,
4 would you say that there is a community of interest
5 between Zapata, Jim Hogg, Duval and Starr counties and
6 the area of Alamo Heights and Terrell Hills in San
7 Antonio?

8 A Well, certainly not on, of course, on
9 an urban-- rural basis. And, on the other basis
10 probably not.

11 Q Would you say that this district meets
12 the criteria of compactness and contiguity?

13 A I can't remember whether it is contiguous
14 or not.

15 Q Is it-- Assume it is contiguous.

16 A I thought it was. Compact, no, I wouldn't
17 think so.

18 MR. EASON: Thank you, sir.

19
20 CROSS EXAMINATION

21 Questions by Mr. Luns:

22
23 Q Have you ever handled a campaign in
24 Dallas County for the legislature?

25 A For State Senate only, not the House.

C. E. - Kneggs

Q Not the legislature?

A No, sir.

JUDGE JUSTICE: Speak up, please.

A For the Senate we were involved with Ike Harris when he was first elected to the State Senate, but not directly for the House of Representatives.

Q Now, of the amounts of money that you talked about, or the total amount that you talked about that it would cost in Dallas County to run for the legislature, I understood you to give a figure of \$87,390.00. Is that right?

A Just a moment. \$87,390.00, that is correct.

Q Did it cost any more to run in '72 than it cost to run in '70?

A Well, these figures I have are the current figures. These reflect current costs.

Q Effective for 1970?

A These reflect the most recent rating increases that the media-- buyer in Dallas advertising agency was familiar with, so I assume they are.

Q Mr. Kneggs, there has never been anybody in the history of Dallas County that ever spent \$87,390.00 running for the legislature that you know of, has there?

1 C. E. - Knepps

2 A That I know of?

3 Q Yes.

4 A No, I couldn't say that.

5 Q As a matter of fact, you heard Mr.

6 Agnich say that in the last election he spent \$31,000.00
7 plus; did you hear him say that a little earlier?

8 A Yes, I did.

9 Q And, are you aware that in 1970-- Well,

10 first of all, in deciding what one spends in running
11 for the legislature, doesn't it depend to some extent
12 on what one's opponent spends?

13 A Let me answer it this way. I think in
14 Dallas County you are faced again with a peculiar
15 problem. It is so large that you have to have name
16 identification to win on a Republican ticket, and I am
17 speaking now as if I were recommending this budget to
18 a Republican candidate. Now, regardless of how weak
19 his opponent, my view individually is if he is not
20 known by the majority of those voters he is not going
21 to win, as a practical matter. And, this is why this
22 budget is-- reflects what it takes according to a media
23 buyer in Dallas County under present costs to get that
24 name known.

25 Q All right. I want to hand you the

1 C. E. - Kneggs

2 Defendants' Exhibit Number 10 and ask you to look at it,
3 if you will, please, sir, and tell us whether or not
4 your figures indicate that Ian Holmes should have been
5 elected in 1970 against a Republican opponent, having
6 spent the sum of \$210.00, as that exhibit shows?

7 A I think that some of the previous testi-
8 mony-- Again, I am going to repeat some of the things
9 that have been said here, but there is a distinct
10 difference in running on the Republican-- as a
11 Republican nominee in Dallas County than there is under
12 a Democratic nominee under the present system-- that is
13 what I based the assumption on. The fact that Mr.
14 Holmes or others win, in my opinion, is the same as
15 others have said; because they have the benefit of that
16 party vote they get on the Democratic ticket.

17 Q I am sorry. Maybe--

18 A This budget is recommended for a Republican.
19 I didn't say Mr. Holmes or any Democrat would have to
20 spend this amount of money.

21 Q All right, sir. I am sorry, Mr. Kneggs,
22 I didn't intend to be arguing with you but I misunderstood
23 you. I thought you said that anybody, to get elected
24 to the legislature, would need to spend that kind of
25 money in Dallas County. But, what you were saying was

1 C. E. - Knepps

2 that a Republican in Dallas County would expect to
3 spend that much money.

4 A If I didn't say that I am sorry, because
5 I meant to qualify--

6 Q Maybe you did.

7 A My work is strictly Republican.

8 Q That is what you intended to say?

9 A Yes, sir.

10 Q And, wouldn't it be reasonable to say that
11 the political climate, being what it is in Texas, that
12 there are many single-member legislative districts in
13 Texas that a Republican cannot get elected in regardless
14 of how much money he spends?

15 A I think that is probably right.

16 MR. LUNA: Thank you, sir.

17 JUDGE GOLDBERG: Any further questions?

18 MR. CROUCH: Yes, I have just one more
19 question, Your Honor.

20 CROSS EXAMINATION

21 Questions by Mr. Crouch:

22 Q When you said that-- let's see if I can
23 rephrase it this way. When you said that the Democrats
24 would have the benefit of the Democratic slate, I assume
25

1 C. E. - Kneggs

2 you were referring to the previous testimony that they
3 would have the benefit of a coalition, which is sometimes
4 referred to as DCRG and that they would have the benefit
5 of somebody else spending the money for them, is that
6 correct?

7 A I am not as familiar with that committee
8 as others here, but my own observation in participating
9 and studying these election results is that the Demo-
10 cratic slate has a very, very strong edge going into
11 the November election. And, it seems to be that that
12 vote occurs very heavily there and it is not dependent
13 upon the name identification which seems to be what is
14 required for a Republican to win.

15 Q Do you recall what the filing fee was
16 for a candidate for the state legislature, Mr. Kneggs?

17 A I am sorry, I don't.

18 MR. CROUCH: Fine. I pass the witness.

19 JUDGE GOLDBERG: Any further questions?

20 Does that end the Republicans' case?

21 MR. CROUCH: Your Honor, we had one

22 other witness, Mr. Bill Bass, which is a
23 prospective candidate. I think the parties
24 have stipulated that he would testify as
25 alleged in his petition, and I will save the

1 Court's time and not put him on. I would say 848
2 that he is a prospective candidate and would
3 like to run for the State Legislature and
4 claims the discrimination that is suffered
5 upon him because he is a resident of Dallas
6 County and had he been a resident similarly
7 situated in Harris County he would have had
8 an opportunity to be a candidate for the
9 legislature.

10 Now, in addition we submitted to the
11 Court, and I have had marked as an exhibit,
12 I think it is DR Exhibit Number 9, which is
13 a proposed plan for reapportionment for Dallas
14 County. And, I would assume now is not the
15 appropriate time to discuss it, but we will
16 have somebody available to discuss at the
17 appropriate time, otherwise that concludes
18 our presentation.

19 MR. EASON: I think I am going to call
20 one witness, Your Honor, because I have been
21 able to dispense with a number of my witnesses
22 by fortunately being able to, I hope, show my
23 position in regards to certain elements of the
24 action by the witnesses of the other parties.
25 At this time I would like to call Mr. Van Archer.

D. E. - Archer

VAN ARCHER,

a witness called by the Plaintiffs, after having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

Questions by Mr. Eason:

Q State your name, please, sir.

A Van Archer.

Q What is your position with the Republican Party in Bexar County?

A I am Chairman of the Republican Party of Bexar County.

Q And, how long have you been so acting?

A Since 1970.

Q And, prior to that time did you have any experience with the Republican Party or with working in politics?

A Well, I guess I started back, say, around Goldwater time as block captain.

Q When you say "around the Goldwater time", what do you mean, specifically?

1 D. E. - Archer

2 A 1964.

3 Q All right. And, since 1964 until the
4 present time have you been fairly active in your political
5 work with the Republican Party?

6 A Yes, sir. Afterward I worked in the
7 fund raising part of it.

8 Q Would you say that most of your activities
9 with the party have been with the fund raising part up
10 until the time you were elected county chairman?

11 A Yes, sir, up until that time.

12 Q Where do you live, Mr. Archer?

13 A At 218 West Linnwood in San Antonio.

14 Q Where is that in San Antonio?

15 A Well, it is over there pretty near
16 Trinity University.

17 Q All right, sir. Have you lived in San
18 Antonio all your life?

19 A Yes.

20 Q Now, Mr. Archer, I will ask you to help
21 me on this-- to look at our exhibit that has been design-
22 ated as SAR and the various numbers, SAR-1, please.

23 JUDGE JUSTICE: What is your business or
24 occupation?

25 A I am in the parking lot business in San

1 D. E. Archer

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2 Antonio and also I build houses with my brother.
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1 D. E. - Archer

2 21st going to take in now besides Bexar?

3 A Well, sir, I don't know all of the
4 counties, but it is something on the order of, I believe--
5 I don't know what all of the counties are.

6 JUDGE GOLDENBERG: I see.

7 Q But it does take in the lower southern
8 portion of the county and that is and what was then
9 Senator Connally's district? Is that correct?

10 A Yes, sir.

11 Q All right. The next exhibit which is
12 numbered SAR-2, would you please tell--

13 A --Well, all these maps do is just show
14 the pattern of voting and this state map here shows
15 the governor's race of 1966 between John Connally and
16 T. E. Kinnearly and it marks out the brand new senatorial
17 lines in this 21st district and then in yellow ink I
18 put in the percentage that the Republicans got in those
19 counties. And I think it goes all of the way down to
20 six per cent in one county.

21 Q But in any event, in the gubernatorial race in
22 1966, it would then show the new present 21st senatorial
23 district with the vote in the gubernatorial election for
24 that year for the entire district, together with the
25 per cent?

1 D. E. - Archer

2 A Yes, sir.

3 Q All right. Could we have SAR-5, please?

4 A The percentages are written in, but I
5 can't read them there. And also on this map it shows
6 that each county making up this new 21st district shows
7 a Democrat majority of seventy per cent or more.

8 Q Yes, sir. Mr. Archer, I am calling your
9 attention to SAR-4. Would you tell us what this map
10 depicts?

11 A This is a map-- city map showing the 1968
12 governor's race between Eggers and Smith and the yellow
13 painted in precincts are precincts that Paul Eggers
14 received fifty per cent or more or fifty-one per cent
15 or more.

16 Q In the areas shaded yellow?

17 A Yellow, yes, sir. With the new senatorial
18 lines drawn in.

19 Q Now, as I understand the map, and you
20 correct me if this is wrong-- in this red line here,
21 where you have written "21st district proposed" that is
22 the one that has been passed by the Board? Is that
23 correct?

24 A Yes, sir. That is correct.

25 Q And this was all what per cent? Over

D. E. - Archer

fifty per cent?

A Yes, sir. Close to sixty or sixty-five per cent. I wrote in the percentage of the Republican vote in each one of those precincts.

Q All right, sir. I will ask you if you will, if you would step down here a moment, please?

JUDGE WOOD: You will have to speak up, because he won't have the benefit of a speaker down there.

Q All right. Speak up. Now we are referring to the Smith-Eggers race in 1968. Is that correct?

A Yes, sir.

Q I would appreciate it if you would just take say the bottom ten precincts in this area that is now being put in the district.

A Starting right here from Burr Road in San Antonio north, Alamo Heights and Terrell Hills, I will just read off the percentile of Republican vote.

Q Please.

A 65.71, 71.17 per cent, 68.79 per cent, 60.92 per cent, 67.39 per cent, 64.10 per cent, 59.32 per cent, 64.04 per cent, 61.90 per cent, 47.10 per cent and so on-- 62.5 and 63 per cent.

1 D. E. - Archer

2 Q All right. That is sufficient, I
3 believe. All right. If we could, let's have the next
4 exhibit, please.

5 MR. EASON: Can your Honors hear him
6 all right from that position?

7 JUDGE WOOD: Fine.

8 A I don't know if it is this way all
9 over the state, but in Bexar County you can't get a
10 map showing the precincts, the county and the city on
11 the same map, so this just shows the county precincts
12 in Bexar County.

13 JUDGE WOOD: Now for the record, please,
14 identify it by exhibit number that you are
15 speaking of there.

16 A This is SAR Number 3. This is the
17 Bexar County map showing the yellow part is the-- where
18 the Republicans carried in that precinct. And again,
19 showing the senatorial lines here-- the new ones
20 (indicating).

21 Q All right. Now, this is the same
22 race as the last exhibit? Is that correct?

23 A The same race. These three maps
24 here are the Eggers-Smith governor's race in 1968.

25 Q Why isn't the 21st district colored

D. E. - Archer

yellow there where you just read from on the other map?

A This just shows the county precincts.

Q In other words, that was in the city?

A Yes, sir.

Q And so it wouldn't--

A Yes, sir. It would be all this part and it has to be so big as to carry--

Q --But you have included in this the part of the county that are not incorporated in the city? Is that correct?

A That's correct. Just the numbered precincts.

Q All right. Now, the next one?

A And again, this would be the 1968 governor's race showing the new district on a statewide basis.

Q Now, this is-- read the exhibit number.

A This is Exhibit SAR Number 5. With the Republican percentages written here. I will read you some of these percentages. 35.5, 18.3, 14.7 and in Duval County, 4.3 per cent.

Q Now, this is Republican vote or what?

A Yes, sir. This is the Republican vote.

Q In the same election you have been

1 D. E. - Archer

2 discussing before and reading the percentages from in
3 northern Bexar--

4 JUDGE WOOD: --But he is reading from
5 old District 21.

6 A No, sir. This is the new district.

7 JUDGE WOOD: This is the proposed
8 district 21?

9 MR. McDANIEL: If I might object to
10 that, it is not proposed at this point.

11 JUDGE GOLDBERG: It is legislative
12 redistricting board district.

13 MR. McDANIEL: The Precinct 21, yes.

14 JUDGE GOLDBERG: As decreed by them.

15 MR. McDANIEL: That is correct.

16 A And I will say again, according to this
17 race, all counties in this new district are sixty per
18 cent or more Democrat, except for Bexar and Guadalupe
19 County.

20 Q All right. Let's have the next exhibit,
21 please.

22 JUDGE WOOD: For sake of clarification,
23 Mr. McDaniel, where it says "proposed", it is
24 that which has been adopted by the Board?

25 MR. McDANIEL: That is correct.

D. E. - Archer

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JUDGE WOOD: All right.

Q All right. Please identify the exhibit by number.

A SAR Number 7.

1 D. E. - Archer

2 Q All right. What does this map--

3 A --This is, again, the governor's race
4 of 1970 between Eggers and Smith, and the yellow precincts
5 that Eggers carried and white part if the precincts that
6 Smith carried. Again showing the new senatorial lines
7 in it with the percentages written in of what the
8 Republican, Eggers, received out of this--

9 Q --Well, don't bother reading those.
10 Just explain the maps and we won't burden the record
11 with reading all of these percentages in, but you have
12 calibrated--

13 A --Sixty-five to seventy per cent Republican,
14 yes, sir.

15 Q Yes, sir. Let's go on to the next one,
16 please, sir.

17 A The next one is SAR-6 and again, this
18 is the Bexar County map with the yellow being the
19 Republican precincts with the new senatorial lines
20 drawn in. Is that sufficient?

21 Q Now please identify that by number.

22 A This is SAR-8.

23 Q What does that depict, please?

24 A Again, this is the governor's race of
25 1970 and all counties where sixty per cent or more

1 D. E. - Archer

2 Democrat, except for Bexar and Guadalupe counties.

3 Q All right, sir.

4 A This would be SAR-9. And this would be
5 the 1966 senate race between Carr and Tower, again
6 showing in yellow the precincts that John Tower
7 carried in Bexar County. And this is the county map.

8 Q All right. What do 10 and 11 depict,
9 please, sir? That is SAR-10 and SAR-11.

10 A 10 would be the city precincts with
11 the yellow showing where Tower carried with the new
12 senatorial lines drawn.

13 JUDGE WOOD: That would be the '66
14 election?

15 A Yes, sir. 1966. And the last one here
16 would be on a statewide basis, 1966 Tower race, and
17 this I did a little bit different. Three lines in
18 each of these counties meant seventy per cent Democratic
19 vote and (indicating) sixty percent Democratic vote and
20 one line was fifty per cent Democrat of those counties.

21 Q All right, sir. Just take the stand
22 again, please, sir.

23 (The witness resumed the stand)

24 Q Now, Mr. Archer, These maps were all made
25 by you or under your direction or control? Is that

1 D. E. - Archer

2 correct?

3 A Yes, sir.

4 Q And they do depict, as I recall, the
5 old senatorial districts plus you have chosen three
6 races, the one in 1966 between the gubernatorial race
7 of Connally and Kinmerly, the 1968 governor's race
8 between Smith and Eggers-- the 1970 governor's race,
9 Smith and Eggers, and the 1966 Tower-Carr senatorial
10 race.

11 A It shows the results of those elections
12 with the new lines drawn in.

13 Q All right. And it depicts in the one
14 instance the City of San Antonio, the County of Bexar
15 and the third would be a state map on which the new
16 senatorial district 21 is laid out?

17 A Yes, sir.

18 Q And the purpose of these is to show the
19 voting records of the areas to the extreme majority of the
20 new district and those of the southern section? Is that
21 correct?

22 A Yes, sir.

23 Q During your experience working with the
24 Republican Party in Bexar County, this area that we are
25 talking about in the new 21st District, is this a

1 D. E- Archer

2 Republican or Democratic area or conservative area?

3 A This new part in the 21st District in
4 San Antonio is the heart of the Republican area.

5 Q All right, sir. Do you feel they have
6 any common community of interest with the people down
7 in Starr and Jim Nogg and Duval?

8 A No, sir. Not a bit.

9 Q Do you feel if they had come into the
10 southern part of the county as they did under the old
11 senatorial redistricting, that there would be more
12 compactness of the district?

13 A There is no doubt about it being more
14 compact that way.

15 Q Do you feel there would be more community
16 of interest?

17 A I would say there would be more community
18 of interest on the southern district, taking in the
19 southern part of the county just like if you went the
20 other way and took in the northern counties to make up
21 a district-- you would take in the north side of San
22 Antonio.

23 Q Now, you have also prepared, but we
24 are not going into now, your proposals, should it become
25 necessary for a new senatorial redistricting and also for

1 D. E. - Archer

2 single-member legislative redistricting? Is that
3 correct?

4 A Yes, sir. That's correct.

5 MR. EASON: Pass the witness.

6 JUDGE WOOD: Did you present, Mr. Archer,
7 any of your proposed plans or maps to the
8 Board at any time?

9 A Yes, sir, Judge. I was the first
10 witness to the Legislative Redistricting hearing that
11 they had in San Antonio. That was a subcommittee of
12 the Texas Legislature that met down there in March.

13 JUDGE WOOD: And you presented the plan
14 for both the legislative as well as the
15 senatorial redistricting for Texas?

16 A I presented a congressional plan and a
17 State House of Representatives plan and in the State
18 Senate plan, I worked in conjunction with the Republican
19 Party.

20 JUDGE WOOD: That's all.

21 A And I also appeared before the Redistricting
22 Board up here.

23 JUDGE WOOD: In Austin to testify?

24 A Yes, sir.

25 JUDGE WOOD: I have no further questions.

D. E. - Archer

Thank you very much.

MR. McDANIEL: May I cross examine?

JUDGE GOLDBERG: Yes, sir.

CROSS EXAMINATION

Questions by Mr. McDaniel:

Q One of the bailiffs has gone to get the pretrial order of the San Antonio Parties which has attached to it the State Senate redistricting plan. I want it for purposes of my cross examination about District 21. Here is a copy I will hold it here because of the smallness. Mr. Archer--

MR. McDANIEL: May I approach the witness?

JUDGE GOLDBERG: Sure.

(Mr. McDaniel approached the witness with an exhibit)

Q District 21 you have commented on as being noncontiguous and noncompact, have you not?

A Well, in my opinion it is not compact, no, sir. Not the part of Bexar County. It is compact and the rest of it.

Q All right. District 23 which is an adjacent district goes from Comal County clear out to

1 C. E. - Archer

2 Culberson County, does it not?

3 A Yes, sir.

4 Q Do you know your Texas geography well
5 enough to estimate the approximate distance across that
6 district?

7 A Well, I drove out there last summer.
8 What could it be? 250 miles or 300?

9 Q It is closer between 400 and 500. District
10 25 is not compact, either, in any sense of the word, is
11 it?

12 A Well, the only difference in that would
13 be out in West Texas it would be very sparsely populated
14 and you have to make up a district of 361,000, so that
15 is a big area that we are talking about and it is more
16 compact-- I think-- I think you would say that 21 we
17 are coming in and digging out an area.

18 Q Well, these counties and 21 down here
19 and 21, with the exception of Webb--

20 A Is this a proposal or--

21 Q No, sir. This is the plan. Down here
22 in Webb County where you have 72,000, other than that,
23 these are all sparsely populated counties, too, aren't
24 they?

25 A That's right.

1 C. E. - Archer

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2 Q Out of Bexar County in District 31 do
3 you know approximately how many Bexar County citizens
4 were needed or conversely, how many people in Bexar
5 County were put in District 31?
6

1 CE - Archer

868

2 BY MR. McDANIEL:

3 A In round figures around a hundred and ten
4 thousand in the new district.

5 Q In the new district, that's what I am
6 talking about.

7 As you stated, it takes 361,000 people to
8 make a senatorial district, does it not?

9 A Yes, sir.

10 Q Which means that somewhere in the state you
11 have got to get a quarter of a million people joined to
12 Bexar County, does it not?

13 A Yes, sir.

14 Q Now, in your judgment do the people in
15 Terrell Hills and Alamo Heights---

16 A Excuse me, just on semantics, I'm not saying
17 draw them to San Antonio, that South Texas needs some more
18 people to make up the district---

19 Q I understand that, but the district -- I
20 believe we can use one of your bigger maps for this and
21 won't have to be walking around so much.

22
23 (REPORTER'S NOTE: Map is changed on
24 the map stand.)
25

CH - Archer

869

Q Would you say that the people up here in Alamo Heights and Terrell Hills share no community of interest with the people in Guadalupe County?

A I don't believe there is a community of interests between Alamo Heights and Seguin, no, sir.

Q I thought you said while ago that was the only county in the bunch that shared a community of interest.

A No, sir, I didn't ever say that. I said that Bexar County and Guadalupe County were the only ones that voted for a Republican, a little higher percentage than areas of South Texas.

Q Well, at least, they have that similarity then, don't they?

A You mean as far as intelligence?

Q As far as Republican vote is concerned.

A Well---

Q What about Medina County on the west?

A Well, any time, I feel like, Mr. McDaniel, you've got a county that borders, you've got a little bit closer community of interests than you do going way down in the South, if you look at it according to markets and schools and churches and everything like that. I don't think there's really a community of interests, not in that

CE - Archer

870

part of Alamo Heights from Medina County, if you took in a little portion, say, of the western end of the county, you might could justify it.

Q Let me ask you this. Would you think they would have any more community or any closer political affinity, these Republicans in Alamo Heights and Terrell Hills, if they were in Senator Bernal's district?

A Would you repeat that again?

Q I say, would the Republicans out in Alamo Heights and Terrell Hills in the northern part of Bexar County have any greater affinity of interests or political philosophy with the people in Senator Bernal's district than they have with people in District 21?

A Being that they come from San Antonio, I would say there is a lot more community of interests, but also just north of Alamo Heights proper was in Bernal's old district.

Q Now, if the community of interests then depends on San Antonio, then don't the people down here in Senator Rothmann's district have the same community of interests with San Antonio as they would have with the people in District 21?

A No, sir.

Q You realize, of course, that this---

1 CR - Alshar

871

2 A What I am saying is that you have more
3 of a community of interests if you have to take a few
4 people out of Bexar County. No county is going to come
5 out with exactly two or three State Senators. You are
6 either going to have a little bit more or a little bit
7 less than a whole number. Is that right?

8 Wall, that's correct.

9 A What I am saying is that you would have
10 more community of interests if you have got the district
11 that comes from the south upwards to take in a southern
12 portion of the county. See what I mean?

13 Q Wall, I can see what you are talking about
14 as far as geometric nicety is concerned, that it might
15 look prettier if it were across the bottom of the county
16 and made a U-shape rather than circling the county, but
17 if the community of interests is oriented on San Antonio,
18 do the people in Senator Rothman's district have any
19 less community of interests with San Antonio than the
20 people in Northern Bexar County?

21 A Wall, out in the northeast part of the
22 county is probably the most affluent part of Bexar County,
23 and I would say that the southern part is less affluent.

24 Q Wall, the affinity with the City of San
25 Antonio does not depend on affluence, does it?

1 CH - Archer

2 A No, but I am just saying that the economic
3 make-up of the district, looking at it that way, that the
4 southern part of Bexar County would have more in common
5 with the southern district.

6 Q Why?

7 A For economic reasons for one.

8 Q For what economic reasons?

9 A Well, let's just say the median income of
10 the families that work out there.

11 Q Well, are you saying this because the people
12 in lower Bexar County are poorer than the people in Northern
13 Bexar County that they have more community of interests with
14 the people, say, down in Webb or Zapata County?

15 A I think their income would be closer to
16 being the same.

17 Q Now, you recognize that this few people that
18 you are referring to, this hundred and ten thousand, has
19 got to come out of Bexar County somewhere.

20 A Well, I mean to make it a lot easier to
21 draw these lines, if you would change it and put it up
22 another way, then you would mess up the plan for the whole
23 State of Texas, that's right.

24 Q Well, I'm not talking about that so much as
25 I am the fact that--.

1 CB - Archer

873

2 A This is kind of like working a crossword
3 puzzle. When you have one thing, then you have got to
4 make changes all over.

5 Q Yes, I understand that. What I am driving
6 at is whether the people are taken out of the north part
7 of Bexar County or the south part of Bexar County. District
8 21 is still going to be an awfully large uncompact district,
9 is it not?

10 A It will be an awfully large district, being
11 that the lower part of the State of Texas is sparsely
12 populated, but if you came up and took the hundred and ten
13 thousand people out of the southern end of Bexar County,
14 it would be a lot more compact, and you would come closer
15 to making, say, a square than having to draw little lines
16 up and come in with a---.

17 Q Now, Medina County and Guadalupe County,
18 which are in District 21, go as far north as Bexar County,
19 don't they?

20 A Well, Guadalupe is a little bit farther
21 north, I believe.

22 Q So, geometrically speaking, if we are talking
23 for the moment about geometrics, for whatever value that
24 may have in drawing senatorial districts, geometrically
25 speaking, there is a hardening area there with District 21

1 CE - Archer

874

2 in North Bexar County, just as there is in South Bexar
3 County, is there not?

4 A Wall, Mr. McDaniel, what you are talking
5 about on this is that these other counties are more rural
6 oriented counties, and the northeastern part of Bexar
7 County is anything but rurally oriented.

8 Q Wall, are you saying that if we took a
9 hundred and ten thousand people out of South Bexar County----

10 A You can always look for something and say
11 that there might be a commonness of interests, as the
12 churches in Northeast Bexar County like there are in other
13 parts, and things like that, but I am talking about the big
14 factors that you look at. There's no commonness of inter-
15 ests.

16 Q Wall, to get a hundred and ten thousand
17 people out of Bexar County we have got to get some people
18 out of the City of San Antonio, haven't we?

19 A Yes, sir.

20 Q Now, the people in San Antonio, whether or
21 not they come out of the southern part of San Antonio or
22 the northern part of San Antonio are urban people, are they
23 not?

24 A There's a good part of the southern part of
25 Bexar County that is more agricultural.

1 CH - Anchor

2875

3 Q Do you think there's a hundred and ten
4 thousand people in that agricultural area of Bexar County?

5 A No.

6 Q Well, now, I am talking about the number of
7 people that you have got to take out to get this hundred
8 and ten thousand. They are going to have to be urban people,
9 are they not?

10 A Yes, sir.

11 Q And these urban people, regardless of which
12 urban people they are, are not going to have the same
13 interests as the rural people in, say, Zapata or Jim
14 Hogg or Starr County, assuming their interests are rural
15 and agricultural? They are different, aren't they?

16 A Well, there could be a little bit of differ-
17 ence, but if you look at it on that basis, then you could
18 say that you could never have a commonness of interests
19 with anything.

20 Q Do you suppose, really, that you can have
21 a commonness of interest in a district, say, that of
22 necessity runs from Guadalupe County and Medina County
23 clear down to Zapata and Starr County?

24 A Would you state that question again?

25 Q I say, do you suppose that you could ever
really have a community of interests in a senatorial district

CE - Archer

876

which runs from Medina and Guadalupe County on one end down to Zapata and Starr County on the other end?

A Yes, sir, I think you could have.

Q Well, by the same token, do you have a community of interests then in a district that would run from Comal County clear out to Culberson County, a distance of some 500 miles?

A I'm not familiar with that.

Q Well, that's District 25 we were talking about.

A I don't know what the make-up of those counties is.

Q Well, all right, let me put it this way. You are familiar with the City of Uvalde, are you not, or the City of New Braunfels? It is in Comal County.

A I am familiar with New Braunfels.

Q And you are familiar with the City of Pecos, perhaps, are you?

A I wouldn't say I am familiar with them. I have just driven through the towns.

Q What about Midland?

A I have been there once.

Q Would you venture an opinion as to whether Midland and Pecos have a community of interests with New

CR - Archer
Braunfels?

877

A Mr. McDaniel, I couldn't really say that, because I don't know anybody in either Pecos or Midland. I have never visited there or---.

Q But you are willing to say that the people in Saguin and Guadalupe County would have a community of interests with, say, San Diego in Duval County or Laredo in Webb County. Is that correct?

A What I am saying is that Guadalupe County is more -- you might say a little more agricultural. San Antonio and Bexar County is an urban county.

Q And the whole county is pretty much urban, isn't it?

A Fairly much, yes, sir.

Q So that somebody had to make a choice about which hundred and ten thousand people to take out of Bexar County?

A That's right.

Q To go in another senatorial district?

A That's right, somebody had to make a choice, but there is what you call fair play, too.

Q Well, now, why would it have been any fairer to have taken that hundred and ten thousand people out of some other part of Bexar County than out of the northern part of Bexar County?

CE - Archer

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A Well, what I was trying to show on all these maps is the dilution of the Republican vote. It just so happens that that area taken out is the heart of the Republican vote.

Q Well, I take it that you would agree that it would be virtually impossible, at least, without the most flagrant sort of gerrymandering to draw a senatorial district in that area of the state with 361,000 people in it which would have a reasonable chance of electing a Republican senator.

Would you take that as a fair statement?

A That it would be hard to draw one?

Q That it would be very hard to draw a district in that part of the state that would contain 361,000 people and have a fair chance of electing a Republican Senator.

A Well, I'll tell you the truth, Mr. McDaniel, I never looked at these or I never tried to draw anything, even for our own purposes, with the Republican Party in mind. We drew it to what would be fair for all citizens of San Antonio, and I think it would be very easy to draw a fair state senate line for Bexar County that is fair to everybody in Bexar County.

Q Well, you are complaining as a Republican.

1 CB - Archer

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2 Are you saying that you could draw a senatorial district
3 in Bexar County in which you could elect a Republican
4 Senator, 361,000 people district?

5 A I don't know if it is -- of course, that
6 all depends on who the candidate is, but, like I said
7 before, we can draw lines that would be fair to the whole
8 citizenry.

9 Q Would you go so far as to say that it would
10 have been fairer, instead of putting this in 21, if they
11 had come north up through Kendall and Harr and Kinble
12 and on out here clear to Midland to get the Republican vote
13 out there, which is pretty heavy sometimes?

14 A No, sir, that wouldn't be fair at all, but
15 if you wanted to take in on drawing these lines -- if you
16 wanted to take in a few northern counties, then why not
17 take the northern counties that border on Bexar County?

18 I don't think you have to run a little line 400 miles out
19 there. The people are right there.

20 Q If you take those counties which are to
21 the north of Bexar -- would you look at the map for a
22 moment and tell the Court how many people there are, for
23 example, in Kendall County?

24 A According to those figures 6,964.

25 Q All right. How many are there in Gillespie

1 CR - Archer

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2 County?

3 A 10,353.

4 Q How many in Kinble?

5 A 3,984.

6 Q How many in—?

7 A You are going to some little counties.

8 Q How many in Sutton?

9 A 3,173.

10 Q How many in Mason?

11 A The figures are so small I can barely read
12 them, 1,356.

13 Q How many in Llano?

14 A Where is that?

15 Q Llano is the one right up here straight
16 north that you said I was venturing too far west.

17 A 6,979.

18 What I mean is, you can take and make an
19 arc. You don't need to draw a line.

20 Q Well, but you can't make an arc when you
21 are working with counties that have five or six thousand
22 people in them and come up with a half million people
23 without making an awful big arc, can you?

24 A Well, where did you get the half million
25 people figure?

1 CH. Archer

208 881

2 Q Well, the half million is the number of
3 people that it takes to make up a senatorial district with
4 the hundred and ten thousand coming out of Tular County.

5 A No, sir, that's not right. It would take
6 a quarter of a million.

7 Q What did I say?

8 A You said a half million.

9 Q Excuse me. I meant to say a quarter of a
10 million.

11 Let me rephrase my question then. It takes
12 an awful lot of five and six thousand counties to add up
13 to 250,000?

14 A That's right, but it would be a lot fairer
15 than if you take out of Tular County to go west and take
16 the western part of the county. Don't you think that would
17 be fair play?

18 Q Well, let's examine that for a moment.

19 You would in that instance have to take
20 these counties which are presently included in District
21 23 and carve approximately out into the Midland area at
22 least, would you not?

23 A Well, now, you're talking about on a state
24 map if you have already got these other districts already
25 drawn in. If you are going that way, you would have to

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2 start over with the whole State of Texas.

3 Q That's the point I am driving at, of course.
4 If you did that going up this way (indicating), 25, which
5 is all these sparsely populated counties out here, would
6 have to go down here into 21 or somewhere else, would it
7 not, because it is going to have to have its 351,000 people,
8 too.

9 A You have to get them from somewhere. That's
10 right, but, like I said earlier before in the week, we
11 did present a proposal---

12 Q Well, now, what did your proposal do?

13 A Well, we have it right here.

14 Q Do you have it handy?

15 A Our attorney has it right there.

16
17 (REPORTER'S NOTE: Counsel produces
18 document.)

19
20 Q Now, your proposal then comes back to
21 the proposition that we were talking to while ago, and
22 that is, take the people out of South San Antonio, rather
23 than out of North San Antonio, does it not, and I again
24 turn to the same question I asked while ago.

25 A You have the same dissimilar urban and rural

1 CH - Archer

2 interests there as you have in the present composition
3 of District 11, do you not?

4 A Mr. McDaniel, I really feel like there is
5 a lot more commingling of interests because all of these
6 census tracts down here -- this is all rural part of
7 Decker County, farming part of the community.

8 Q Is there anything close to 110,000 people--.

9 JUDGE WOOD: So the Court Reporter
10 will know, what exhibit number are you
11 referring to?

12 MR. McANILL: It is SAR-14.

13 JUDGE WOOD: All right.

14 A Then you would get your heavy concentration
15 of people that would go into this 110,000 up here (indi-
16 cating). This area along in here would be south of
17 IN410, and those people out there would be -- well, you
18 know, say, Union people or I am talking about -- I would
19 just say that they have a lot more in common with the
20 people going down south.

21 Q Don't you suppose that those people down
22 there might be equally upset by not being in a senatorial
23 district which was predominantly a Decker County senatorial
24 district? I mean equally with you, equally as you are?

25 A I don't think they would be, because that

1 CH - Archer

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2 is the way the district is. That's the way it was in
3 1970 basically.

4 Q But San Antonio has grown, has it not?

5 A Yes, sir.

6 Q So that those district lines had to be
7 re-formed, did they not?

8 A Yes, sir.

9 Q Mr. Archer, Mr. Korbal testified yesterday,
10 I believe, that from his study of the voting patterns in
11 San Antonio that the highest vote in the Republican Primary
12 in San Antonio was 3,000 some-odd votes. Is that approxi-
13 mately accurate?

14 A That's the highest you mean it has ever
15 been?

16 Q That was his testimony, as I understand.

17 A I don't believe that is right. That is
18 what it was from my race in 1970, but I believe about in
19 1960 -- I think ten years before that in 1960 at one time
20 there were nearly twice that many that voted in the
21 primary.

22 Q In the Republican Primary?

23 A Yes, sir.

24 Q What is the approximate population in this
25 area that comes right in here on District 21 (indicating),

1 CM - Archer

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2 looking at Exhibit SSB-9, this area which includes Alamo
3 Heights and Terrill Hills.

4 A Where would you start the line coming in?

5 Q Let's say---.

6 A There would be about 125,000 people that
7 makes up the Bexar County part of this new 21st District,
8 but you mean just in Alamo Heights and Terrill Hills?

9 Q Yes, this area right in here (indicating).

10 A Yes, you are going way out, now.

11 Q Well, let me rephrase the question.

12 Approximately how many Republican voters
13 do you suppose you have in there? Have you made any effort
14 to determine that based on the Senate race or the Governor's
15 race?

16 A We took the percentage of the vote.

17 Q I realize that, and that is why I had hoped
18 you would run out the percentage figures to total.

19 A 115,000 people and where you came in, that's
20 where most of the population comes from.

21 Q The percentage figures I recall were around
22 60 percent, so am I correct in assuming that there would
23 be around 60 to 70,000 Republican voters at best in that
24 area, even assuming you go by the senatorial races and
25 Governor's races, rather than primary?

1 CH - Archer

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2 A Well, I wish there were that many, but
3 the 110,000 people takes up everybody from children on
4 up. If it is just voters, it would be a whole lot less
5 than that.

6 (No omission here.)

Cross - Van Archer

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Q That is a valid point, I had forgotten we were talking about people, rather than voters. Your point is well taken.

A That is the heart of the Republican district, there is no doubt about that.

MR. MICHAEL: I don't believe I have any more questions.

CHRISTIAN M. MICHAEL:

Q Mr. Archer, what does this exhibit right here, what is this exhibit number right here, that first one?

MR. CURRY: That is Exhibit SAR-9.

Q All right, on Exhibit 9, do the yellow portions shaded -- shaded portions -- represent the Republican areas of Bexar County, the whole area? Is that the Bexar County map, first?

A Yes, that is the Bexar County map.

Q Now, do the yellow shaded areas represent the Republicans -- those that you have designated as Republican voting areas of Bexar County?

A This would be -- That top map there, sir, is the 1966 Turner - Carr race in which the yellow part would be where John Turner got --

Cross - Van Archer

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Q All right. Now, then, do you have one showing the 1970 --

A Yes, sir. The latest --

Q Let's look at '71. Let's get --

A That is the County map.

Q That is the County map? Is that for '70?

A Yes.

Q Does that area up there show the Republican areas -- between the Republicans and the Democrats?

A Yes.

Q How many people are in that area? How many people would you --

A That is sparsely populated; that is the County --

Q I am saying that whole shaded area that voted Republican.

A There are not too many people out there. That is right out there around --

Q Does that include the --

A The next map -- No. The next map would be the City map.

MR. CUNY: This is SAN-6.

Cross - Van Archer

MR. RASON: This has to be read in conjunction with the City map that you just looked at.

Q This is a City map?

A Yes.

Q Now, is this shaded area I am looking at Exhibit what -- what number is that?

MR. CHERRY: SAR-7.

Q Is that shaded part there in yellow the Republican area of San Antonio?

A (Witness nods head).

Q How many people are represented in that whole shaded area there -- that whole shaded area -- whether it be 21 or 24 or 26?

MR. McDaniel: Or 19.

Q Either 19, 21 or 26?

A How many people are represented?

Q Yes, approximately in that shaded area?

A Maybe 300,000.

Q All right. Your contention is --

A That is people.

Q That is what I was surmising, there would be about 320,000 people in that area. Your contention is that they have cut up that area into three parts

Cross - Van Archer

just like they did -- Isn't that your contention?

A Like who?

Q Divided the strength of the Republican Party?

A Yes, sir.

JUDGE WOOD: All right. That is all I wanted to know.

MR. MEDANIEL: May I ask a question or two?

JUDGE WOOD: Yes, sir.

CROSS EXAMINATION

QUESTIONS BY MR. MEDANIEL:

Q In your percentage figures on that map, which is the governor's race of 1970, indicates 51.14 here, some 60's and some 50's in others across here. You have got 48.41 there and you don't have the percentage figure over here. I take it your division line is 50 percent, is that correct?

A That we draw the yellow --

Q Yes.

A Yes, that means that Eggers got one more vote than Smith did.

Cross - Van Arman

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Q All right. And, I also take it from looking at this map that this is not a full and complete map of the City of San Antonio?

A Well, that is a complete map of the City, and the one above that was the County map with the County precincts, isn't it?

Q No, I don't think you understand what I am saying. I am looking at these lines on here right now. (Indicating). Does this include the whole City limits on this map?

A Yes, sir, that is the City limits.

Q Now, this is the County map, of course, and I am correct in my assumption, am I not, that the area that is within the City here where it says "See the City map" on SAN-6, which is still the Governor's race of 1970, this area in here, I take it, including that, is the City which was covered on the other map and is the heavily populated part, is that correct --

A Yes.

Q -- of the City? All right. Now, this, I take it, is the complete -- looking at the County map 26th District, is that correct?

A No, sir. Well, this is the complete -- were you talking about the line going out?

Cross - Van Archer

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Q The 26th District here.

A Inside there is the 26th.

Q All right, sir. And, it is all an urban district, is it not?

A Yes, sir.

Q All right. Now, this is the approximate center of the City of San Antonio, is it not?

A The center?

Q The center of the City of San Antonio?

A Yes, sir.

Q Now, Senator Rothmann's district, which is 19, is approximately the complete southeast half of Bexar County, is it not?

A (Witness nods head).

MR. CUNY: You will have to speak out.

A Yes, sir.

Q Now, is it correct to assume that the population density in this half of the County is somewhat less than it is in the northwest half of the County?

A On density and taking in the whole county, yes, sir.

Q All right.

A But, you see, there may be a reason for that, if I might explain just a little bit. You see,

1 Cross - Van Archer

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2 up in the northern part of this 24th District, it is a
3 Republican District, as you can see on the map.

4 Q I can see it on the rural area, which
5 you would agree is the less populous part of it here.

6 A Well, put it down here, then, on the
7 City map.

8 Q I am going to -- I understand it comes
9 down in here also.

10 A But there in the yellow part is a
11 Republican district, as you can see on the map.

12 Q Uh-huh.

13 A The reason for that is in the makeup
14 of the district as people were consulted on what district
15 they wanted, as it goes in politics, to run for the State
16 Senate for to be a State Senator, you have to live in
17 that district.

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C. E. - Archer

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2 CROSS EXAMINATION

3 Questions by Mr. McDaniel:

4
5 Q All right.

6 A And, that Republican district out there
7 is where state Senator Bernal lives.

8 Q Isn't that what you are saying, Mr.
9 Archer, is that the Republicans in San Antonio are dis-
10 content because Senator Kothmann had a Democratic
11 district drawn and the Republicans in north Bexar
12 County did not have a Republic district drawn, isn't
13 that what it boils down to?

14 A No, sir. We didn't ask for a Republican
15 district, we asked--

16 Q I am not asking what you asked for. But,
17 that is the source of your discontent, is it not? You
18 would like to have-- and this is what his Honor was
19 pointing out a moment ago--

20 A That is not-- What we are contending is
21 there is no commonness of interest between the portion
22 there of northeast Bexar County and the rest of South
23 Texas; it goes all the way to Deval County and Laredo.

24 Q All right. But, you have already admitted
25 that the interest of Bexar County is urban and that that

C. E. - Archer

urban interest, regardless of what area of the county is involved, has nothing in common with Rapats County, for example, isn't that correct?

A It has more in common on the southern edge of the county.

JUDEN GOLDMANS: Why? You keep saying that, but why?

A Why does the southern part of the county--

JUDEN GOLDMANS: Yes.

A First of all, sir, there is farming down there on the southern part. And, I would say--

JUDEN GOLDMANS: You mean in the southern part of Bexar County?

A Of Bexar County, yes, sir. And, secondly, I would say the income level of the average person that lives out-- if you took 112,000 people out of the southern part of the county and if you averaged their income-- that is would be a lot closer to being in the same with the average person in each of these other counties of South Texas than you would with the northeast part of Bexar County. That is your highest income people are out there, all across the northside of Bexar County. You just draw a line straight across.

C. E. - Archer

BY MR. McDANIEL:

Q What other interest do they have in common?

A Well, then, if you took the income level, then, their cultural differences would be different too. But, the entertainment, breeding-- I mean, that is just small points, but--

MR. McDANIEL: I don't believe I have any more questions, Your Honor. Thank you.

MR. ELSON: I don't believe I have any more questions.

JUDGE WOOD: Mr. Archer, you may step aside.

MR. ELSON: Your Honor, this will conclude my portion of the case. And, in lieu of summarizing the deposition, which I find would be very hard to do, we spent nearly a whole week taking the depositions and I know the Court would do it-- that they do contain a very large portion of this case and I would like to call their attention specifically to pay close attention to Mr. Robert Spellings' deposition relative to the time element, the

amount of supervision and control and the mechanics and actual procedure of drawing these maps at the time.

JUDGE COLMAN: We will assure you we will read all of the depositions.

JUDGE WOOD: Mr. Eason, we have been reading them all during the trial at night, so we are very familiar.

MR. EASON: I understand that and I didn't mean to infer anything else except that a good part of my case is built up by my questions and answers in these.

JUDGE COLMAN: What we haven't read we will read.

JUDGE JUSTICE: It looks like pretty much of it is contained in depositions.

JUDGE COLMAN: That completes your case?

MR. EASON: Yes, sir. The San Antonio Republican plaintiffs rest.

JUDGE COLMAN: That leaves what, Mr. Eason?

MR. EASON: Before we consider that, there are a couple of formal matters that I want to get clear. We have offered for the

record before our case was closed out on the side of the Plaintiffs, Your Honor, with reference to a couple of depositions and I want to be sure it is in the record.

JUDGE GOLDBERG: Before we terminate the case we will be sure that all the depositions and all the documents are in the record, but let's talk about live witnesses.

MR. RICHARDS: No more live witnesses.

JUDGE GOLDBERG: How many live witnesses do you have, Mr. Luna?

MR. LUNA: I have three, Your Honor, two of whom are here this afternoon and the other one will be here in the morning.

JUDGE GOLDBERG: Would it be more convenient to you and us to hear the one witness now so that he can go back to his business?

MR. LUNA: I am sure it would be.

JUDGE JUSTICE: Is he likely to be a lengthy witness?

JUDGE GOLDBERG: I think we ought to certainly accommodate him. Is that satisfactory with you?

MR. CUNY: Yes, sir.

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D. E. - Brown

L. E. Brown, identified by this

a witness called by the Defendant, after having been first duly questioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination

Questions by Mr. Loney

Q What is your name, please, sir?

A L. E. Brown.

Q Where do you live, please, sir?

A At 8367 Birch Lane, Dallas, Texas.

Q And, what is your age?

A Fifty-five.

Q How long have you lived in Dallas County, Texas?

A For forty years.

Q Are you sworn in any official capacity insofar as the political system is concerned?

A Yes, I am.

Q What is that capacity?

A First, I am precinct chairman of the Democratic Party.

Q What precinct number?

D. E. - Brown

A It is 324.

Q All right, sir.

A And, I am on the executive committee, Democratic Party, and other organizations politicalwise.

Q Now long have you served as a precinct chairman and a member of the Dallas County Democratic Executive Committee, Reverend Brown?

A As a chairman I have been there ten years.

Q Is that the immediate past ten years?

A Yes, sir.

Q And, have you also been appointed as election judge to hold most elections in your precinct over that period of ten years, including Democratic primaries and general elections?

A I have. The city, also, and school elections.

Q Reverend Brown, what age man are you, sir?

A Fifty-five.

Q With respect to color of the people who live in your precinct, are they black, white or part of both?

A I have ethnic groups of Mexican-Americans and whites and what we call blacks.

1 **Shiget - Brown**

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2 **Q** What percent Black?

3 **A** Oh, possibly -- well, 80 percent.

4 **Q** As President Chairman and Election
5 Judge, Howard Brown, have you worked with everybody in
6 that percent for a number of years, regardless of their
7 color?

8 **A** Oh, yes, I have was the request and
9 the admission of all of our groups, for they call on us
10 for many things, concerning the civil work.

11 **MR. CHAIRMAN:** Now, Mr. Brown, I think
12 he can answer the question without elaboration
13 and without self-serving admissions which we
14 cannot cross-examine him on, because the
15 people are not here to do anything but welcome.

16 **MR. CHAIRMAN:** Well, we have been
17 pretty liberal in letting everybody talk
18 about themselves pretty much, and I don't want
19 to be in a discriminatory mood this late in
20 the afternoon, but let's get along.

21 **MR. CHAIRMAN:** Now, I want to ask you
22 whether or not you are familiar with an organization
23 called the Democratic Committee for responsible Government?

24 **A** Yes.
25 **Q** How you also worked with that

Direct - Brown

932

organization? ...

A I have.

Q Do you, in addition to your duties as president chairman, and a member of the Executive Committee, serve on the Board of Directors of the Democratic Committee for Responsible Government?

A I do.

Q Is there -- well, that Board is what? 15 people?

A That's right.

Q Is there any other Black person on that Board of Directors besides you?

A Yes.

Q What is his name?

A H. F. Dodson.

Q Is he also a president chairman?

A Yes, he is.

Q Now, is that organization primarily a president type organization?

A Well, I wouldn't say that, as I could see it. It is all concerned.

Q All concerned?

A Yes.

Q All right. Now, Mr. Brown, you have

Direct - Brown

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worked in many campaigns for legislature over the last several years, have you not?

A I have.

Q I want to ask you whether or not you feel that the multi-member district theory of representation in the State legislature is more effective for the Black community than single member districts would be?

A I do.

Q Reverend Brown, in your opinion, is there any discrimination against the Black people in the community simply because of the members of the legislature being elected county-wide?

A No.

Q Reverend Brown, what is your personal preference for the election of members to the legislature, single member districts or county-wide?

A County-wide, I prefer, and I can't recall

Q Would you tell us why, please, sir?

A Well, I feel that if a man is running for a State office, he becomes a State man from that district and it would give us more power and more strength for a man to run county-wide to help the whole.

Q To help the whole county?

A Right.

Direct - Brown

904

Q Reverend Brown, in making decisions and putting together a Democratic ticket for the Legislature, do you have anything to say about it?

A Yes. Beg your pardon?

Q Do you have anything to say, any input in putting together a ticket for the Legislature in Dallas County?

A I do.

Q Are there other Black leaders who also have something to say about it?

A Yes.

Q As that ticket is being put together, Reverend Brown, insofar as the Black membership or members of the ticket, who decides on what Blacks will be urged to run? Is it the members of the Black community or some downtown group or other group?

A Black community.

Q Black community? Now, were you in Dallas County and active in politics -- you have told us you were in the County -- when the Honorable Joe Lockridge was selected to run for the Legislature?

A Yes.

Q Did you participate in the selecting and recommending of Joe Lockridge?

Direct - Brown

905

A. Indirectly.

Q. All right, sir. Indirectly, is that

A. Yes. The one who represented us in closed
 sessions was President of our International Union,
 Reverend E. M. Wright, and whenever he speaks, that is
 him.

Q. Reverend E. M. Wright?

A. Yes, sir.

Q. And he works with your group?

A. Yes, sir.

Q. And he is the president, I believe.

A. I work with his group.

Q. All right. Now, was that you
 mentioned Reverend E. M. Wright, insofar as you know, is
 he the first Black man from Dallas County who was ever
 appointed to a state board by a Governor of Texas?

A. To the best of my knowledge, yes.

Q. He appointed him?

A. Indirectly.

Q. Did he ever get to serve on that board?

A. No, he didn't get to.

Q. Why not?

A. One of our Senators decided that he

didn't want him on there.

Subject - Brown

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Q One of our Senators from Dallas County?

A Yes, sir, I think so.

Q Is he in this room, today?

A I believe so. I believe so.

Q All right, sir. Now --

A -- yeah. I believe so.

Q Now, Reverend Brown, so that the first Black man who was appointed to a State Board didn't get serve because a white Senator from Dallas County objected to it? Is that correct?

A Yes.

Q You know the Honorable George Allen, a member of the City Council?

A I do.

Q Are you aware that Mr. George Allen was not elected Mayor pro tem?

A Yes, I am.

Q I want to ask you whether or not his failure to be elected Mayor pro tem was because he was Black or was it because of some other factors that had nothing to do with his color?

MR. RICHARDS: I assume, Your Honor, unless this witness somehow participated in the vote on this, it might be somewhat remote from his knowledge.

Direct - Brown

SERIES - 92-807

Q. Now called out, JAMES BROWN. This is before the Court, so we can take such things into consideration.

A. Yes my answer, Reverend Brown?

A. My I answer all right? To my knowledge, and with my help, we were trying our best to give George the go sign, which he got it and at the last moment, something else turned up that reflected upon his character, on his managerial ability, on the way I am it, and the way I read it, and that hindered him. It was not otherwise. It was brought out.

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D. E. - Brown

Q Did it have anything at all to do with the fact that he is Black?

A No.

Q Now, Reverend Brown, Mr. George Allen is a friend of yours and you worked for his election, didn't you?

A Oh, yes.

Q Reverend Brown, are you familiar with the raised highway in Dallas County that the Black community wanted lowered?

A In the Spence community?

Q In the Spence community.

A Yes.

Q Was the Dallas County delegation, which was elected countywide, effective in helping the Black community get that problem solved?

A Very much so.

Q I want to ask you whether or not, in your opinion, had we only had one Black member of three, whether or not you think one or two or three members could have done that job?

A No, sir. I don't think so at all. A team.

Q Reverend Brown, have you already been

D. S. - Brown

working with other Democrats in Dallas County in trying to seek out and urge Blacks to run for office?

A Yes, sir.

Q Are you and the other members of the Black community working now on making recommendations to people to run and urging them to run?

A Three people.

Q Three people?

A Yeah.

Q All right. Now, in your opinion, based on your experience, as a member of the Democratic Executive Committee, and helping elect the members of the legislature in the past, if we have a countywide election as we have always had, how many Blacks in 1972 will be elected to the legislature, assuming that the Democrats predominantly win over the Republicans?

JUDGE GOLDBERG: That involves a crystal ball and we have been doing a lot of ball gazing and I am going to let him go ahead, but let's try to confine this within reason.

MR. LUNA: All right, sir. I will withdraw the question, Your Honor.

Q At least you expect to attempt to urge three well-qualified and active Black Democratic candidates

D. E. - Brown

to offer themselves for election?

A I am.

Q And other Black leaders that you are working with are working toward that same end?

A Yes.

Q In the election process and in selecting candidates for the legislature in Dallas County, Reverend Brown, do you feel that the Black community is shown any, what has been termed here "paternalism", or is there a full working partnership?

A Full working partnership.

MR. LUNA: Pass the witness.

JUDGE GOLDBERG: Cross examination by anyone?

MR. CUMMINGS: Your Honor, may we have a few minutes, please?

JUDGE GOLDBERG: Yes.

(There was a discussion among Plaintiffs' counsel at the counsel table outside the hearing of the reporter.)

MR. CUMMINGS: The Plaintiffs pass this witness, since it seems that--

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JUDGE GOLDBERG: --No questions? Mr. Curry? Mr. Janssen?

MR. RICHARDS: You are going to cross?

MR. CURRY: I have one question, Your Honor. I am sorry.

MR. RICHARDS: I think it is part of the direct.

MR. CURRY: That's correct.

MR. RICHARDS: I thought Mr. Curry was part of the direct examination.

JUDGE GOLDBERG: Go ahead, Mr. Curry.

SENATE INVESTIGATION (Continued)

Questions by Mr. Curry:

Q You identified a senator as being in the room who prevented the black from receiving the appointment. Did you indicate his name?

A No, I did not.

Q Who is it?

A Well, do I have to divulge it? I would like to-- I wouldn't like to. That is unethical to me.

JUDGE GOLDBERG: I don't think that is necessary.

MR. IRVIN: I would like to ask one question of this witness. Just one.

C. E. - Brown

CROSS EXAMINATION

Questions by Mr. Irvin:

Q My name is Walter Irvin, Mr. Brown. Is that is?

A That's right.

Q What street do you live on in Dallas?

A Berquin, B-e-r-q-u-i-n (spelling). 5341.

Q What part of Dallas?

A Southeast Dallas.

Q Up there by Crazy Courts?

A Not that far out.

Q Not that far?

A Not that far.

Q The one question that puzzles me is that you, as a member of the executive committee of the Democratic Party in Dallas, I think you stated you were seeking three well-qualified Blacks?

A Yes.

Q Is that true?

A Yes, we are. I am on the committee. I am not doing it myself.

Q You are a high school graduate?

A Yes, sir.

C. E. - Brown

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Q Are you a college graduate?

A No. Two years.

Q Do you have any profession or vocation?

A I am a minister. I have been a pastor for thirty-one years.

Q What other qualities that you are looking for in a-- what are the qualities you are looking for in a prospective Black candidate?

A What are we looking for?

Q Yes.

A We are looking for somebody-- well, I will say this as to what my part of it-- all of us that is on the committee have certain things that we are screening candidates on, but I am looking for a young, bright fellow who is able to have good judgment and be willing to be-- to shape his life the American way. Other mechanics, we can go into that in private.

Q Not that I am particularly interested in you finding me, but I wanted to know what you were looking for.

A I am looking at you, too.

JUDGE COLLINGS: Any cross, Mr. Richards?

MR. COLLINGS: None.

JUDGE COLLINGS: I again wish to state

III. BRAD J. HALLIDAY
that we appreciate your patience during

the day and we will start in the morning

and we will need to be in the courtroom at 9:00 and hopefully complete. Court's
advised that the trial will be adjourned.

(Whereupon Court recessed at 5:35 o'clock

P.M. on the 5th day of January, 1972 to

reconvene at 9:00 o'clock A.M. on the

6th day of January, 1972.)

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WILLIAM E. CLARK, III

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and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BT MR. LINDA:

19-42 227 2000 2000 2000

Q What is your name, please, sir?

A Bill Clark.

Q For the record, Mr. Clark, would you give
 A Yes, sir. I would like to ask you a few more questions.
 Q All right?

A William H. Clark, III.

Q Mr. Clark, what is your age, please, sir?

1. **1954-1955**

9 Where do you live?

A In Dollar. Thousands.

Q How long have you lived in Dallas County?

A All my 119s connect for school.

Q Speaking of school, what is your educational background, Mr. Clark?

A ~~was~~ I received a B.A. from the University of
then an L.L.B. from the University of Sussex.

10 - Clark

Q Are you a licensed practicing attorney at this time?

A Yes, sir.

Q Mr. Clark, after you graduated from law school, what did you then do?

A I worked for a year in the Attorney General's Office here in Austin as an Assistant—.

Q Assistant Attorney General?

A ---Assistant Attorney General.

Q Then after leaving the Attorney General's Office, Mr. Clark, did you go into private practice?

A I did.

Q With what firm?

A The firm was at that time named Clark, Euhn (phonetic), Melt & Reed.

Q Would you tell us, particularly with respect to the law firm that you went with who founded it and when?

A It is my information that my grandfather founded the firm in about 1889 in Dallas.

Q How many of your other family members, and who are they, if any, have been with that firm?

A My grandfather passed away in 1931, I believe, and my father, Bill Clark, was in the firm at that time,

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and by name, one Clark, and my third youngest boy is 1963,
and by name, Bob Clark, was in the class at that time,
and then when Johnny Clark graduated from the school, he
was with the first until he went with the United States
Government. My brother, White Clark, and myself are with
the first group, and all very good fathers. I

Q Mr. Clark, this is the first, the last name
you told of in the show that was in there.

Q Now, did you have any connection with
politics in the State of Texas and Dallas County in 1933?

A. He was a State Representative from Dallas County, and I believe held the office of Speaker of the House of Representatives for two terms during his tenure as a State Representative.

THE UNIVERSITY OF CHICAGO

[illegible]

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1863. It is a very important document, as it contains the President's message to Congress regarding the state of the Union and the progress of the war. The letter is written in a formal, official style, and is signed by Abraham Lincoln.

Direct - Clark

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Q Was he one of the earlier speakers to achieve the distinction of what was then a speaker?

A I believe that is correct.

Q Mr. Clark, would you tell us what type of practice your firm has?

A It is generally civil and corporate practice. In the course of representing our clients, we have to be versed in anti-trust, labor, administrative law and when necessary, appear before committees of the Congress and committees of the Legislature. General corporate and civil practice.

Q Now, Mr. Clark, moving away from your profession in practicing law, I want to ask you about your political endeavors. Have you been involved in politics in Dallas County?

A Yes, sir. Somewhat.

Q Have you ever held a political office in Dallas County?

A Yes, sir.

Q What office was that?

A Democratic County Chairman and then I was on the State Democratic Executive Committee for the terms.

Q Was that a member of the S.D.E.C. from

1 Direct - Clark

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2 the Senatorial district?

3 A Yes, sir.

4 Q We have had a good bit of testimony
5 in this record about an organization as the Democratic
6 Committee for Responsible Government. Are you familiar
7 with that organization, Mr. Clark?

8 A I am.

9 Q Do you now serve as one of its
10 directors?

11 A Yes, sir.

12 Q Mr. Clark, I want to ask you in
13 connection with your political activities, whether or not
14 you worked in precinct campaigning and county-wide
15 campaigning for candidates?

16 A Yes, sir.

17 Q Have you headed up a -- any campaign
18 in Dallas County for National office, and if so, for whom
19 and when?

20 A Well, I think the first time, I was
21 flattered to be asked, along with Tom Suggs in Dallas, to
22 head up the Johnson for President campaign in '64.

23 Q And did you serve in that capacity?

24 A Yes, sir.

25 Q Now, I understand another witness -- I

Direct - Clark

may have misunderstood him -- Mr. Weiser, to say he headed up that campaign. Maybe he was talking about a part of the County. Were you talking about County-wide?

A It was the Dallas County campaign for President Johnson, yes, sir.

Q All right, sir. You and Mr. Tom Suggs were co-chairmen?

A Yes, sir.

Q Mr. Clark, I want to ask you to tell us what type organization the D.C.R.G. is and how it operates.

A Well, D.C.R.G. is just a group of citizens who take an interest in their Government. It is strictly informal. It operates from the bottom, so to speak. The folks in the various precincts express their desires with regard to the feeling of their neighbors and we get together and see if we can't supply, in terms of candidates, and support, for candidates, the organizational backup for political campaigns.

Q All right, sir. And in connection with the selecting or supplying of candidates, I want to direct your attention in particular to the first Black candidate who ever successfully offered himself for election to the Legislature in Dallas County and ask you to tell us how

1 Wheat - Clark

2 841

3 that happened, if you know, sir.

4 A Well, it has been a while, but I will
5 try to recall the best I can.

6 In 1944, I guess it all started with
7 the selection of the delegates to the National Democratic
8 Convention. We have a substantial Negro population in
9 Dallas and that population has been very generous in its
10 support of Democratic nominees in the general election and
11 to my knowledge, we had not had a Negro as a delegate to
12 the National convention in some while, if ever, from Dallas
13 County, and I guess some while from the State of Texas.

14 And there was a gentleman living at that time by the name
15 of Reverend Rutledge, who was held in quite high esteem by
16 the Negro community and was president of the organization
17 they call the Deacons of the Christian Church, and
18 he was getting along in years and had a serious illness
19 and it was pointed out to me that it would be a nice thing
20 to do to put him on as a delegate.

21 A Well, you only get four delegates, or
22 at that convention we had four from Dallas and two alternates
23 I believe, and I felt like it was the appropriate thing
24 to do to ask Reverend Rutledge if he would consent to be a
25 delegate, which he did. And in the course of my conversa-
26 tions with him, it became obvious that surely it was time

Direct - Clark

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that Dallas have a Black representative in Austin, which we had not had up to that time.

Q Let me interrupt you to ask you, was Reverend Estelle recommended to the convention as a delegate to the National convention and selected as such?

A Yes, sir.

Q All right. Go ahead.

A The Democrats had not fared too well in Dallas County up until that time. The Republicans, as I remember, won every race in which they entered a candidate.

Q The election immediately preceding this?

A Well, for the decade preceding.

Q All right.

A So we felt like, you know, we ought to do something about this -- respect the Negro representation -- and so through Reverend Estelle and his successor to his church and his office, Reverend S. M. Wright, we conveyed to them that we would like to support a Negro candidate and did they know anyone who would be qualified to represent all of the people of Dallas in the legislature.

And, so insofar as I am aware, the Negro community came together and they said that, yes, they

1 Direct - Clerk

20013 - 833

2 had a lawyer named Jim Lowbridge, who they would like to
3 propose and asked us to support him and we talked to Mr.
4 Lowbridge and found him to be a highly qualified man of
5 great integrity and had all of the qualifications and
6 probably more than what that you might see, so we supported
7 him and he was. And unfortunately, he died in a plane
8 crash after his first year.

9 Q All right. After his untimely death,
10 was there another elect who offered himself for election?

11 A Yes.

12 Q Who was that?

13 A Kenneth Lee Holmes.

14 Q Now, would you tell the Court what you
15 know about how that selection was made with respect to
16 whether or not the black community participated in it?

17 A Well, we had a little problem. We
18 had had quite a few vacancies over the past years
19 in legislative bodies, and our problem was that the
20 Democrats had never won a single one; the Republicans had
21 won all of them.

22 Q All equal standing?

23 A Yes, sir. That may be an overstatement,
24 but it is not much of one, if it is. Time was very short.
25 I think Jim died immediately after the primary election

Direct - Clerk

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and there was a special election called by the Governor to fill that spot, and as I remember, it was an open election, a general type, Republicans and Democrats and all. We had 15, 16, 17 candidates file for that. We felt like we ought to go back to the Negro community and ask them if they had another man they would like to have serve in the Legislature, and so I called some people that I knew in the Negro Community and tried to impress on them the urgency of getting together quickly and getting something done, so that there would be time to get their candidate elected.

So there was a meeting held by Negroes where they -- between themselves and it was a cross-section of the Negro community of Dallas. And they said they would like to have Reverend Holmes and the only problem was that Reverend Holmes wasn't sure he wanted to do it, and they asked me if I would go talk to him. So that night I went out to Reverend Holmes' church and met him for the first time and he consented to run. And we support all elements of our group. We got together with the Negro community and as a quite astounding thing for Dallas County, out of the field of 15 or 16 candidates, Reverend Holmes won without a runoff. So that is how Reverend Holmes --

Q Then the Democratic Executive Committee

1 Stewart - Clark

2 935

3 wanted to put him on the ballot as the Democratic nominee
4 for the general election that year? Is that correct?

5 A Yes. Q Now, I know that in 1970, when
6 you were on the ballot, that he was -- that 17 others in this
7 special election, the executive committee put him on as
8 the nominee for the general election and then he was

9 A Yes. Q I should see, his election
10 where he was out of the field of 16 was to fill the
11 vacant seat of Representative Leavitt and he then was
12 nominated by the Democratic party as it's nominee for the
13 next term.

14 Q By the way, to disagree for just
15 minutes, there was some testimony in the record that the
16 D.C.R.C. in the 1970 election supported at least one
17 Republican. Did it happen that way, Mr. Clark?

18 A Yes, that's true. Q Now, was there one individual or
19 perhaps more, but was there one individual who had been
20 previously associated with the D.C.R.C. who did support
21 the Republicans?

22 A I believe that's right.

23 Q Who was that?

24 A Tom Blanton.

25 Q And he is not now a director of the

Direct - Clark

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P.C. & G.?

A No, sir.

Q But the organization, as such, supported when in the general election of 1970?

A All Democrats.

Q And what were they called?

A The Legislature?

Q Yes.

A "15 for Dallas".

Q 15 for Dallas?

A No-huh.

Q All right, sir. Mr. Clark, I want to ask you to address yourself, if you will, please, sir, to the cost of elections to the Legislature in multi-member districts, as compared to single member districts. Now, by that I mean are there any cost savings, in multi-member districts or vice versa? If so, what?

A Well, that is a rather tough question to nail down, because we haven't experienced single member districts yet in Dallas County, but it would be my firm opinion that it wouldn't be any more expensive to run multi-member, and possibly less, than if we had 15 separate campaigns to run in single member districts.

Q All right. Now, why? Now, for

Direct - Clerk

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instance, in the case of a state is a newspaper of hundred

Does it -- do you run --

It has the name of all of the candidates on it.

Q And do you would be sending one of with the name of all 15 candidates, instead of 15 ads for each one of them?

A Yes, sir.

Q Now, with respect to mailings, though, Mr. Clark, it has been pointed out here that to the roughly 140,000 voters in Dallas County, that it would be quite expensive to -- for the 15 members of the Legislature to mail letters to them or the candidates? Now is that handled?

A Their own mail-order shop, our organization is based as close to the people as we can get it and that is with the precinct chairmen, where their neighbors can vote either for them or against them, and our candidates for precinct chairmen are usually opposed by others in the primary, and so we encourage our precinct chairmen to mail their precincts in their campaign for precinct chairmen. Well, when they do that, we include in the same envelope, at no additional cost, campaign literature for the 15 for Dallas.

S. E. - Clark

Questions by Mr. Lums:

Q So, then, it is actually a savings in mailing versus separate campaigns?

A Certainly.

Q Of course, I guess, there would be reason in single-member districts why they couldn't slate up and perhaps follow that same procedure, would there, in which case the cost might be the same?

A It would be pretty hard to do in a single-member district, I would say.

Q All right, sir. Mr. Clark, maybe this is getting away from your expertise, but I am going to ask you about the costs for legislative candidates from a Republican standpoint; what would you visualize these problems to be?

A I haven't been able to be present during all these proceedings, but I noted within interest one witness said there were some pretty astronomical amounts, fifty or sixty or seventy thousand dollars, but I would think the Republicans could run a campaign, run their primary campaign, for less than the cost of a new Chevrolet. They only have 18,000 people, roughly, that voted in the their last primary.

D. E. - Clark

At the polling places the clerks checked everybody in and the party has a list of the registered voters and the list of the ones who voted. So, say, you had, as he said, 18,000 people, you know who they are and they have got a precinct chairman in each precinct. So, let's say, these hundred precincts in Dallas, 18,000 divided by three hundred is sixty, isn't it? All they have got

is sixty people in that precinct, on an average, that they would have to get out to vote. And, you know, assuming you didn't use a telephone booth you could call all sixty of them free. If you wanted to write them a letter, you know, say fifteen cents a mailing that is six dollars and three is nine dollars. If you wanted to give each of them a bumper sticker that is a

nickel, you know, sixty cents (phonetic) multiplied by a

Q So, there—

A That is per precinct. And, let's say, you spend one hundred dollars per precinct on 18,000 voters, that is \$1,800.00. What else would you have

Q So, their primary cost should be less than the Democrats, is that correct?

A Absolutely.

Q And, isn't it a fact—at least the history of Dallas County is that on the Republican

D. E. - Clark

ticket they seldom have contests?

A I believe that is correct.

Q In the primary?

A Yes.

Q And, so then any cost they have would be the same-- in the same election where they run against the Democrats in the general election-- additional cost.

A I am sorry, I didn't understand the question.

Q I say: Any additional cost other than what you have told us about would be limited to their general election expenses running against the Democrats for the same office?

A That and the filing fee.

Q Yes, sir. Now, speaking of filing fee. To clarify our filing fee statute, Mr. Clark, it requires one to file an expense account only in a contested race, does it not?

A I can't answer that question.

Q All right. I want to ask you, Mr. Clark, your opinion with respect to the elections in 1972.

MR. RICHARDS: Your Honor, if the Court please--

D. E. - Clark

JUDGE GOLDBERG: Let him ask the

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question.

MR. RICHARDS: You just thought I was going to object, Your Honor.

BY MR. LIMA:

Q The Plaintiffs have asked witnesses all this week what their opinion was as to how many Blacks would be elected in 1972 if it is broken up in Dallas County into eighteen single-member districts. Now, I would like to ask you that same question. In your opinion, in single-member districts, in your opinion, how many Blacks would be elected in 1972, and, then that is the "A" part of it. And, then the "B" part is: Based on your experience in politics, and knowing the system in Dallas County, if they are run in the multi-member district countrywide how many Blacks would be elected in 1972 in your opinion?

MR. RICHARDS: Just for the record, Your Honor, I would like to object to the question as being speculative.

JUDGE GOLDBERG: As we have said before, we have allowed a good deal of crystal ball gazing and I don't see any reason why we should darken the courtroom now. Proceed.

D. E. - Clark

A If I can remember the question, Counsel.

Q The "A" part was single-member districts.

A The single-member districts, and please don't hold me to these figures, but it seems to me that the '70 census reflects that there are about 230,000 Negroes in Dallas County. And, again I don't want to be held to it, but I think on a single-member basis the average per single-member district would be seventy-five or seventy-six or seventy-seven thousand or something like that.

Q Or seventy-four.

A All the Blacks in Dallas County don't live on one block, and I am no expert in map drawing, but based on my knowledge of Dallas County and my knowledge of where Blacks live within the various precincts in Dallas County I doubt seriously that anyone could draw a single-member district map that could elect more than two Negroes to the State Legislature. Now, Part "B", just as we did in 1964 with Joe Lockridge and in '68 with Ian Holmes--

Q Excuse me. Now, on drawing that map you are talking about without especially gerrymandering?

A I would assume it would be a legal map, my map.

U. E. - Clark

Q. Yes, sir. Pardon me.

A. We are doing our best to support, if we are allowed to have multi-member legislative districts, these Black candidates for the legislature and one Mexican-American candidate. And, secondly, I feel very strongly that if you look at what is best for all the people of Dallas County, both individually as Mexican-Americans and individually as Negroes and individually as Whites, it is clearly in everybody's best interest that we maintain multi-member districts. I think we have enough of pitting the Black against White, Black against Mexican-Americans. And, I think single-member districts, insofar as the way politics affects a community, will have a segregating effect rather than a cohesive effect. And, I am proud of our city, proud we have not had riots and other turmoil that other communities in this nation have had. And, I think that contributing factor for this is the reason that in our community people of various religions and races and economic status pull together.

S. E. - Clark

Q In your opinion, assuming that the Democrats are successful in '72, in your opinion will there be three Blacks and a Mexican-American elected?

A Well, Counsel, that is awfully speculative. I would say I want to support three Blacks and a Mexican-American, but I don't win all my races. If I win them all there will be.

Q Based on single-member districts, at least talking about races voting, would there be any way that the Mexican-Americans could elect anybody to a single-member district?

A They are flat out in the cold.

Q Well, Mr. Clark, how do organizations, political organizations, decide whom they will support in a primary election based on your experience in Dallas County?

A Speaking of the organizations that I am familiar with, first of all, you have a filing deadline. And, our party always strives to present to the people qualified candidates. And, if you don't get them to file before the filing deadlines you don't have any candidates. And, the first step is to see that your party proposes for election a qualified man in each place in the legislative races. And, then secondly,

D. E. - Clark

after the filing deadline and you have got -- printed a program and you know who all the players are then you go down the list and see who you think the best qualified are. And, we try-- we are not always successful-- but we always try-- in the unanular-- to put together a slate of those people that we think are most qualified and run them together. And, frankly one of the reasons we do that is for economic reasons-- it is expensive. And, now, we can't raise any kind-- anything like the kind of money I have heard the Republicans talking about in this case.

Q All right. Mr. Clark, I am going to ask you in another field, sir, if you are familiar with the University of Texas at Dallas?

A Somewhat.

Q I believe it does not have the freshmen and sophomore years of college at that university, is that correct?

A That is my understanding.

Q Now, putting this question in perspective. First, Dallas County has single-member senatorial districts, does it not?

A Yes, it does. There has been some testimony in the record that if the legislative districts

Q. E. - Clark

were broken down into single-member districts that they would bind themselves together for such problems that were of interest to the whole county, such as the University of Texas At San Antonio. Now, with that same question as to the University of Texas at Dallas, and talking about the senate as distinguished from the House, the senate being in the single-member districts that you have told us about, was there any senator outside the district in Dallas County where the University of Texas at Dallas was located who for reasons sufficient to the senator refused to support in the last session of the legislature the adding of those two additional first two grades to the University of Texas at Dallas?

A It is my understanding, yes.

Q Mr. Clark, you have told us that Dallas County has some roughly 220,000 or 230,000 Blacks. I want to ask you-- again in rough figures-- it is your understanding that Harris County has roughly 325,000 Blacks.

A That is what I have been told. Certainly, they have more than Dallas does.

Q All right. Now, again, putting this question into perspective, we have been told that if

D. E. - Clark

the county is broken down into something less than county-wide districts, or single-member districts, that we would elect more Blacks in Dallas County. With respect to Harris County, that has roughly fifty per cent more Blacks than Dallas County, it was broken down into less than single-member districts the last time the legislature was redistricted, was it not?

A Less than multi.

Q Less?

A My understanding is they were running congressional districts.

Q Multi-member but in congressional districts less than countywide.

A Right.

Q All right. And Harris County, after it was broken down into less than countywide districts, how many Blacks did they elect?

A It is my understanding that they just had one, Representative Groves.

Q One out of nineteen?

A I believe that is right.

Q And, Dallas County, with 100,000 fewer Blacks and multi-member districts, elected that many, didn't they?

D. E. - Clark

A Yes, sir.

Q Mr. Clark, in Plaintiffs' Exhibit 58--

I am going to hand you to examine Plaintiffs' Exhibit Number 58, being a package of correspondence which, I believe, has been identified in this record which the Attorney General received-- or the Board-- during the redistricting hearings of the Board, and ask you to look at the attached second letter in the stack and tell us what that attachment to that second letter is.

1 DE - Clark

2 BY MR. LUNA:

3 A Counselor, I don't think I have found it
4 here.

5
6 (WITNESS'S NOTE: Counsel indicates
7 to the witness.)

8
9 Q What is the---?

10 A This is a letter on the letterhead of the
11 Democratic Party of Dallas County signed by Earl Luna,
12 County Chairman, transmitting to Attorney General Crawford
13 Martin a resolution adopted by the Dallas County Democratic
14 Executive Committee, favoring the retention of multimember
15 legislative districts.

16 Q No, is the Dallas County Executive Committee
17 composed of elected precinct chairmen in every precinct
18 in Dallas County?

19 A Yes, sir.

20 Q And those are elected from areas of 1,000
21 or fewer voters, are they not?

22 A Substantially.

23 Q Now, Mr. Clark, we have some 43 or 45 black
24 precincts in Dallas County, do we not?

25 A Yes, sir.

DE - Clark

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Q And aren't you familiar -- and approximately 43 or 45 black precinct chairmen?

A Correct.

Q And, although at an Executive Committee meeting you seldom ever have everybody in attendance, but on the occasion that that resolution was adopted are you aware how many votes were against it?

A It is my information that Willie Simons--.

MR. RICHARDS: Excuse me. Objection

until we find out or at least I have the witness on voir dire to see if he was there.

THE WITNESS: I was not there.

MR. RICHARDS: Objection.

JUDGE GOLDEN: Now would he know,

Mr. Luna, what the vote was?

Does the resolution record the negative votes and the affirmative votes?

MR. LUNA: No, sir, it does not, Your Honor, but I think he has had an opportunity to be familiar with party records and information.

MR. CUMMINGS: We would further object that it is not attached as one of the exhibits -- as an exhibit. Now, if Mr. Luna

1 **DR. Clark**

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2 wants to testify, then he can take the
3 stand.

4 **JUDITH CRAWFORD:** You want this witness
5 to testify as to who voted against it at the
6 meeting, when he wasn't there, based on what
7 someone told him? Is that what this is all
8 about?

9 **MR. LUNA:** I think this witness is rela-
10 tively active in the Democratic Party and is
11 generally familiar with the affairs and the
12 records.

13 **JUDITH CRAWFORD:** Well, instead of taking
14 up all this time, if you were at the meeting
15 -- let's move on. Let's get it in in the
16 legal way.

17 **MR. LUNA:** All right.

18 **JUDITH CRAWFORD:** Let's proceed.

19 **(PAUSE)**

20 **JUDITH CRAWFORD:** You would take Mr. Luna's
21 statement as to that happened, wouldn't you?

22 **MR. RICHARDS:** I have no idea. I never
23 heard what happened.

24 **MR. CRAWFORD:** And I would disagree
25 because I have heard differently.

1 MR. Clark

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2 MR. LUNA: We have been rather generous
3 in not objecting to their hearsay, but I
4 withdraw the question.

5 JUDGE GOLDEN: Yes, I thought this
6 would be a matter about which there would
7 be very little dispute, but apparently
8 we are getting dispute that we are get-
9 ting in here nearly.

10 MR. CUMMINGS: If it will please the
11 Court, Mr. Luna says it was unanimous. My
12 understanding is that the—.

13 JUDGE GOLDEN: Pardon me a minute.

14 Mr. Luna, in order to shorten this, would
15 you make a -- were you there?

16 MR. LUNA: Yes, sir.

17 JUDGE GOLDEN: Would you make a statement
18 and let's see if these gentlemen will agree to
19 your statement.

20 MR. LUNA: There was at the time, Your
21 Honor, that the vote was taken, there was
22 one vote against the resolution from a black
23 precinct chairman who had been appointed ten
24 minutes before.

25 After the vote was taken, there was one

1 MS - Clark

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2 white precinct chairman who came up and said
3 that he would like to reconsider his vote
4 and have his also recorded against it, so
5 there were two.

6 JAMES COLUMBOS: Does anybody want to make
7 any comment on what Mr. Luna had to say?

8 MR. COLUMBOS: I have talked with several
9 black precinct chairman who said that, first
10 of all, they did not even receive notice of
11 the meeting, did not know it was going to be
12 held, and that they were 100 percent against
13 what Mr. Luna his talking about.

14 JAMES COLUMBOS: I suppose that this is
15 of such monumental importance that we will
16 just have to get at it another way, Mr. Luna.

17 I was in hopes that we could agree on these
18 things. I must say that I don't think that
19 since Mr. Clark was not there that he could
20 testify.

21 MR. LUNA: I'm not going to proceed with
22 Mr. Clark. I will go another way.

DE - Clark

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BY MR. LUNA:

Q Mr. Clark, although there has been testimony here that the Republicans cannot fund races for the Legislature, I want to ask you whether or not they funded a race for County Sheriff county-wide last year in 1970.

A They had a candidate for Sheriff in 1970, and he ran a very fine campaign which cost somebody some money. I can't testify as to who paid it. The Republicans had a candidate and a good one and well financed.

Q For ten years did they successfully run and finance and elect a Republican candidate county-wide to Congress?

A Yes, sir.

Q And then—.

MR. LUNA: That's all, Your Honor.

Pass the witness.

JUDGE GOLDBERG: Thank you.

Cross-examination?

MR. CURRY: May it please the Court?

JUDGE GOLDBERG: Yes, sir.

MR. CURRY: May I direct a question or two to Mr. Clark?

JUDGE GOLDBERG: Surely.

MR. CURRY: Al Curry, representing the

1 **Q** - **Clark**

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2 **State.**

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6 **BY MR. CURRY:**

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8 **Q** Mr. Clark, I believe you identified earlier
9 in your testimony a Mr. S. M. -- correct --

10 **A** S. M. Wright.

11 **Q** --S. M. Wright. Mr. Wright, I believe,
12 was appointed to a State Board by Governor Connally. Is
13 that correct?

14 **A** I believe that is correct.

15 **Q** I believe he was a black from Dallas. Is
16 that correct?

17 **A** Correct.

18 **Q** Did he serve?

19 **A** No.

20 **Q** Do you have knowledge why he did not
21 serve?

22 **A** I understand under the rules of the Senate
23 that if a Senator from the district from which a proposed
24 appointee objects, that the Governor either withdraws the
25

1 Q - Clark

2 nomination, or the fellow politely steps aside, and that is
3 what happened in this case.

4 Q Who was the Senator?

5 A Rev. Wright lived in Senator Oscar Mansy's
6 senate district, I think.

7 Q Did he exercise that privilege, Senator
8 Mansy?

9 A I don't know that of my own knowledge. I
10 just know what happened.

11 MR. CUNY: Thank you.

12 JUDGE JUSTICE: Is there cross-examination?

13 MR. RICHARDS: Just one moment, Your Honor.

14
15 (REPORTER'S NOTE: Counsel here confer
16 out of the hearing of the court
17 reporter.)

18
19 MR. RICHARDS: No cross, Your Honor.

20 JUDGE GOLDEN: I didn't hear you.

21 MR. RICHARDS: No cross, Your Honor.

22 JUDGE GOLDEN: Does that conclude the
23 testimony of all the combatants?

24 MR. LUNA: That concludes the witnesses
25 that I had, Your Honor.

JUDGE CULBERTSON: Do you have anything, 957

Mr. Curry?

You are going to read from some depo-
 tions or summaries then?

MR. CURRY: Yes, sir, summaries -- we
 have no live witnesses, Your Honor.

Thank you, Your Honor. I was informed,
 and I may have spoken out of turn. Mr. McDaniel
 was here earlier, and I believe he indicated
 to me that he did have a witness.

JUDGE CULBERTSON: Could we find him out in
 the hall? Do we know where he is?

MR. CURRY: I will locate him.

JUDGE CULBERTSON: Thank you very much.

I would like to get through with the live
 witnesses, and then we can take up the other.

MR. CURRY: Yes, sir.

MR. REICHARD: We still have a few minor
 matters, not live witnesses, but matters of
 exhibits--.

JUDGE CULBERTSON: Oh, yes.

MR. REICHARD: --and interrogatories
 that were never responded to, and the 40
 hours have long since expired that I would like
 to get clarification on from the state.

JUDGE GOLDBERG: If we can just get all
our live witnesses, our depositions, and then
we will tidy it up with a nice little how.

MR. McDaniel: Your Honor, I have one
other live witness. He is not on the list. I
have spoken to both attorneys involved in
the Bexar County situation. Putting him on is
all right with them. I intend to ask him five
questions on direct, and they both, I am sure,
will have some questions for him on cross.

JUDGE GOLDBERG: We will allow you six.
Proceed.

MR. McDaniel: Thank you, Your Honor.

We call Mr. Paul Silber.

These five include the questions of his
name for the record, Your Honor.

PAUL SILBER, JR.,

a witness called by the Defendants, having been first duly
captioned and sworn to testify the truth, the whole truth
and nothing but the truth, testified as follows:

1 Mr. Silber

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2 STRICT READING

3
4 BY MR. McDANIEL:

5
6 Q State your name, please.

7 A Paul George Silber, Jr.

8 Q Mr. Silber, are you a member of the Texas
9 House elected from Bexar County?

10 A Yes, sir.

11 Q In your opinion is the Mexican-American in
12 Bexar County denied effective participation in politics
13 for races for the State Legislature—?

14 A No, sir.

15 Q —by multimember districting?

16 A No, sir.

17 MR. McDANIEL: Now, Your Honor, there
18 has been a lot of testimony along this. I
19 don't concede that this is a legal question
20 before the Court, but there has been so much—.

21 Q The next question, do you prefer multi-
22 member districting or single member districting for Bexar
23 County?

24 A I prefer multimember districting for Bexar
25 County.

DE - Silber

960.

Q Would you explain to the Court why you prefer multimember districting for Bexar County?

A Yes, sir. Bexar County comprises a single or generally a single community of interests. To create single member districts in Bexar County would fragment this community of interests into parochial districts. A short example of that is if we created single member districts in Bexar County, we would end up with three districts that would have predominantly the poverty areas would be included in that, the Welfare recipients, medical indigent. These areas would be black and two brown districts in all probability.

Their effective representation through responsible compromise would be impaired because of, I think, the general prevailing attitude of the people in non-poverty areas to Welfare, Welfare reform and such other activities.

Now, this is just an example of many types of problems that exist in Bexar County as a whole that could not be effectively represented when you fragment this community of interests into parochial districts.

In other words, a person from an affluent, wealthy district, his ability to compromise, to work with the problems of a poverty district will be greatly impaired.

1 **MR. SILBER:**

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2 **MR. McManis:** Thank you, Your Honor.

3 **JAMES WOOD:** Mr. Silber, I believe you are
4 an engineer by profession, are you not?

5 **THE WITNESS:** Yes, sir.

6 **JAMES WOOD:** I saw in the morning paper, I
7 believe the Express here in Austin this morning,
8 where you had, in the event that this Court
9 should hold multimember district procedures
10 invalid or unconstitutional, that you had drawn
11 a map or a plat of Bexar County. Is that true?

12 **THE WITNESS:** That is true, sir.

13 **JAMES WOOD:** All right.

14 **MR. EASON:** Nathan Eason from San Antonio.

15 **CROSS-EXAMINATION**

16 **BY MR. EASON:**

17
18
19
20 **Q** Mr. Silber, in other words, your position
21 is, as I understand it, that your delegation from San
22 Antonio would be more effective on a multimember slate, as
23 it is now?

24 **A** Yes, sir. The minority would have much more
25 effective representation.

CE - Silber

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Q How many Mexican-Americans do you have in your Bexar County Delegation?

A The present delegation has one.

Q And do you have any Negroes?

A No, sir.

Q Do you have any Republicans?

A No, sir.

Q In your experience with politics do you know of any Negroes who have ever been elected from Bexar County to the State Legislature?

A I don't know, sir.

Q Well, do you know of any?

A I don't know.

Q Do you know of any Republicans that have ever been elected on the Republican ticket to the State Legislature from Bexar County?

A Did you say on the Republican ticket?

Q Yes, sir.

A I don't recall. I don't know.

Q Mr. Silber, do you have an opinion as to how many Negroes could be elected from Bexar County, if it were divided into single member districts?

A Yes, sir.

Q What is that opinion?

CE - Silber

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Q One.

Q Do you have an opinion as to how many Mexican-Americans could be elected from Bexar County on a single member district plan?

A Two.

Q Two?

A Two.

Q Do you have an opinion as to how many Republicans could be elected from Bexar County on a single member district plan?

A Depending on the plan, from three to zero.

Q From three to zero, all right, but at this time there is one Mexican-American, no Negroes, and no Republicans?

A That's correct.

Q Do you know -- what in your mind would be a comparison of the population of Bexar County as between so-called Anglos and Mexican-Americans?

A I would guess about 40 percent.

Q Forty percent what?

A Mexican-Americans.

Q And what percent Anglos?

A Oh, probably about 50 percent.

Q And the balance or the ten would be Negroes

1 CE - Silber

964

2 and other minorities. Is that right?

3 A And that's just my guess.

4 Q Yes, sir, but in any event, we have one
5 Mexican-American representative in the State Legislature
6 from San Antonio with under your premise 40 percent of
7 the population?

8 A Well, the Mexican-Americans are represented
9 by ten representatives from Bexar County, not just one
10 Mexican-American representative.

11 Q Yes, sir, I understand that; but, if you
12 would, please, answer the question.

13 With 40 percent by your understanding of
14 the percentage of the population, they do have one Mexican-
15 American surnamed representative in the State Government?

16 A There is one Mexican-American surnamed.

17 Q Representative Silber, have you had occa-
18 sion to become acquainted with District 21, Senatorial
19 District 21, which incorporates the northeast portion of
20 San Antonio with the lower part of Texas, specifically,
21 Starr, Jim Hogg, Duval and Zapata Counties?

22 A Yes, sir.

23 Q Do you have an opinion concerning the
24 compactness of this district?

25 A I wouldn't think it was compact.

1 CW - Silber

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2 Q Would it be more compact if they had come --
3 assuming, I believe we have about 110,000 population in
4 Bexar County over and above the two ministerial districts
5 which are contained entirely within the county. Is this
6 correct?

7 A That is correct.

8 Q Would it have been more compact had they
9 gone -- assuming they were going to incorporate it with
10 the lower part of Texas, if they had come into the
11 southern part of Bexar County?

12 A It is possible that it could be more
13 compact.

14 (No emission here.)

D.E. - Silber

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Q Do you have an opinion concerning the community of interest between Alamo Heights, Terrell Hills and northeastern San Antonio and Bexar County with Jim Hogg, Duval, Bexar and Starr Counties?

A Well, this particular district fragments the community of interest in Bexar County that I previously testified about, because there is a community of interest between the people in Terrell Hills and the people in southern Bexar County and central Bexar County and all over Bexar County that does not exist between it and the southern counties of this State.

Q Well, do I take it from your answer then that you feel that there is not a community of interest between the people of the top portion of this district, 21, and the southern part of the district?

A That's correct.

MR. HASON: I believe that's all.

JUDGE WOOD: Mr. Silber, with reference to the plan that you proposed and that you prepared, would that plan, in your opinion, tend to elect a Republican?

A It would give the Republicans the opportunity to be elected, but the plan would not tend to elect one. In other words, it balanced the communities of interest

D.E. - Silber

and gave opportunities for election.

JUDGE WOOD: Thank you very much.

CROSS EXAMINATION

Questions by Mr. Idar:

Q Mr. Silber, I am Ed Idar and I represent what has been known as the Bernal Intervenor in the Tyler case also. You are a State Representative from San Antonio, I understand?

A Yes, sir.

Q How long have you served in the Legislature?

A This is my first session, Sixty-Second session of the Legislature.

Q Do you know John Benavides, District Judge down there in Bexar County?

A Yes, sir.

Q He has been elected county-wide, has he not?

A Yes, sir.

Q And he is a Mexican-American?

A Yes, sir.

Q You have indicated that in your opinion if

D. E. - Silber

we were to have single member districts for Bexar County, and that as a result of that, we might have say three Mexican-Americans, for example, and perhaps one black, that they might not be able to work with the rest of the delegation? Is that the purport of your testimony?

A No, sir.

Q Well, would you please restate it for me? I was out of the room when you started in.

A I say if we fragment Bexar County, the community of interest, and to parochial districts, that the parochial interest of each district will impair the responsible compromise or the ability to responsibly compromise and it would not necessarily fall on the Mexican-American being worse than on the Anglo of another district. The fact that they look to "he is my Representative and I have a definite opinion on this legislation and I want him to vote my way", ties his hands. But while in Bexar County as a whole, there is much more latitude for understanding with your voters, where he gets elected county-wide, that he has to represent all of the people of the County, therefore we can tolerate this mild indiscretion in his voting record.

Q Does it boil down to the quality for the

C.B. - Silber

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representation from each of those single member districts?

A No, sir. I think it boils down to the parochial nature of each of the districts, whether compromise can be obtained.

Q Well, isn't the reverse necessarily also true that in a multi-member situation, particularly where you have a major area in a city that has lacked representation for a long time? And because of the factors of money, cost of campaigning and so forth, that the people that reside within those areas, the neglected areas, the slum areas, have not been able to get their interest adequately represented?

A That is what I have testified to; that I feel that a multi-member district more adequately gives them representation than a single member district. Because of their problem to the community as a whole, they will have effective representation. Yes, a single member district would elect a person from that district to represent them. But his representative effectiveness would be impaired, compared to one that is representing -- elected county-wide. For instance, if Bexar County --

Q -- All right. I believe you answered what I asked you, but my question is, isn't the effectiveness

C.E. - Silber

of a multi-member delegation as it relates to the problem of the people in the slum area, also inhibited by the other pressures that are upon him from the rest of the community -- necessarily pressures that are even stronger than those exerted from the slum areas?

A From the voting of a delegation as a whole from Bexar County, there would be, in my opinion, there would be more votes for legislation to effect or to assist minority groups or these property areas or these districts by voting with a delegation as a whole than it would be if single member districts. In other words, the effectiveness of the delegation -- how many votes can you put on one side would be greatly enhanced in multi-member districts.

Q I am going to refer, Mr. Silber, to Plaintiff's Exhibit BI-2 that is before this Court. It is, as you can see, a map of the City of San Antonio. It doesn't contain the entire county. Now, is it true or not that some of the -- how can I classify -- major State projects that have come into San Antonio by virtue of action by the Texas Legislature have included the University of Texas at San Antonio and the medical school and that has also brought into being a Bexar County Hospital, and that everyone of these facilities have been located in the northwest portion of the City? Is that

C.E. - Silber

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correct?

A That is correct.

Q Do you have any idea how many millions of dollars that is going to represent in way of capital improvements to that portion of the City?

A There are several million dollars. The City is growing in the northwest direction and the Board of Regents located these schools there; not the Legislature.

Q But the Legislature appropriated the money?

A The Legislature appropriated the money to locate the school in Bexar County and divorced themselves from the location of where the school would be in Bexar County. They left it to the Board of Regents to locate all of those facilities in the best interests of them.

Q All right. And who appointed the Board of Regents?

A The Governor.

Q And what influence does the Legislature have on the appointment of the Governor, opposed to the Board of Regents?

A To my personal knowledge, little or none.

Cross - Silber

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Q You mean the people from the Senate have no influence on the actions of the Governor --

A -- I can't speak for the Senate.

Q But the point is, can you tell us where we have any major installations or improvements that have been constructed in any other part of the City of San Antonio that relates to the west or the east or the south side, by virtue of the result of the actions by the Texas Legislature, whether directly or indirectly?

A Yes, sir. For instance, if we take Bexar County through a span of time, when the growth of Bexar County was to the south of the City, we had the State Hospital, which was on the south side of town --

Q -- well, how many years ago are we talking about at that point?

A Well, what I am trying to answer your question is, is that where facilities are located are within the growth pattern of a community. They do not necessarily determine the growth pattern of the community. In other words, I would assume that the Board of Regents located the University where they did, because that's where they figured the most of the students would be. That is where the Mexican-American growth is, toward the north-west, and that is where the Anglo growth is, toward the

Cross - Silber

973

northwest. That's all right, isn't it?

Q You haven't answered my question. What about the southern portion of the City?

A Well, the growth isn't toward the southern portion. When it was, they had facilities located there.

Q Well, suppose we have located some of these installations in the southern portion of the City. Wouldn't that have a tendency to encourage the growth and the development of that portion of the City?

A Well, if that is the purpose of these facilities, yes, that would have encouraged growth, but it would be false encouragement, as I have indicated.

Q In your opinion?

A All of this is my opinion.

Q All right. Do you know whether or not Senator Norval had any input in the Legislature that relates to the University of Texas Medical School and the University of Texas at San Antonio?

A I would assume he had a lot of input into it.

Q In fact, he was the Senate sponsor, wasn't he, of that legislation?

A I believe so.

Cross - Silber

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Q Would you agree with me that Senator Bernal has become a fairly outspoken Mexican-American leader in San Antonio?

A I think he is probably the most outspoken leader, and he doesn't live in a Mexican-American district.

Q Right. But he does speak out for those people?

A That's right. And he doesn't live there.

Q And he has spoken out on issues involving the migrant farm worker? Is that correct?

A I believe he has spoken out on most issues for Mexican-Americans.

Q All right.

A And other people in Bexar County, as a matter of fact.

Q And he is possibly one of the only legislative delegation, whether it be the house or the Senate, that has done so, is he not?

A I don't know whether that is correct or not.

Q Well, have you, for example, ever spoken out on behalf of the migrant farm worker?

1 Cross - Silber

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2 A I have not spoken out on behalf of
3 the migrant farm worker, per se, no, sir.

4 Q Or any other issue that is related
5 directly to the needs of the Mexican-American population?

6 A I have spoken out on educational
7 problems --

8 Q Oh, I suppose you are now concerned
9 about financing our State educational situation by virtue
10 of the recent Court decision?

11 A I was more concerned with Edgewood
12 20 years ago when very few people knew it was a district,
13 and when it wasn't predominantly a Mexican-American district
14 -- their problems. In other words, I am aware of the
15 problems in Bexar County and I speak out for them, but
16 different people have different expertise and effective-
17 ness, and working as a delegation, we are able to do this
18 for a community of interest as a team.

19 Q Well, do you think that Senator Bernal
20 being an outspoken Mexican-American leader, has been
21 unable to act as a member of the team and to push for the
22 interests of the rest of the community?

23 A Certainly not.

24 Q In fact, he has been effective both
25 ways, has he not?

Cross - Silber

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A -- That's right.

Q -- Can you cite me another member of your delegation that has been as effective in both aspects; both for the community as a whole, as well as for the people say like in Bernal's case, the people from the ethnic background that he comes from?

A -- Well, when you consider that one Senator is worth five representatives, as far as population representation, I would -- I feel that I should be able to name five. I think that is very difficult to compare the effectiveness of Senator Bernal against anyone, because at any one point in time, when we only have two Senators, and 30 percent of them -- or Senator Bernal is Mexican-American, it sort of falls that his role is to advocate for the Mexican-American and he, I would say, also doesn't desire to be preempted in this role.

Q -- I am not seeking to preempt him; I am trying to establish the fact and see if you will agree with me --

A -- I would say this --

Q -- that the people in these slum areas, your Mexican-Americans and your Blacks, have certain needs that the Legislature must respond to, that the quality of representation under either single or multi-member

Cross - Silber

977

districts, to a large extent, has been inhibited in the expression in the Legislature of the needs of these people?

A That is not true.

Q I am further trying to see if you will agree with me that depending upon the man involved, whether he comes out of a multi-member district or a single member district, he may look at the overall interest of the community, as well as the specific interests of one area that he may be particularly concerned with and do a good job both ways, like Senator Joe Bernal?

A If Senator Bernal had to run in a legislative single district, he could not be the Senator that we know him today.

Q Could he be the Senator we know him today if, in effect, his single member Senatorial district was not predominantly Mexican-American?

A When he first got elected, I believe it wasn't predominantly Mexican-American. In other words --

Q -- he has been recruited from that District now for once or twice, has he not?

A This is, I believe so.

Q Let me ask you this: what about Senator Rothman? Has he been quite as outspoken as Senator Bernal?

1 Cross - Silber:

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2 has been on issues that relate to the Mexican-American?

3 A Yes, sir. He has not been outspoken on
4 many issues. However, he has been very outspoken on
5 another issue; Mitchell Lake. For instance, that issue of
6 the pollution or of the alleged pollution of that area of
7 Bexar County, which is a small segment of Bexar County, a
8 very few people -- the Bexar Delegation, because of the
9 community of interest, and because of the fact it is a
10 multi-member district, could speak to this particular
11 problem, facing the total opposition of the City, itself,
12 who owns this particular sewage disposal lake.

13 Q Of course, Mitchell Lake has been an
14 issue in San Antonio for a considerable length of time,
15 and sentiment on the part of the City Council has finally
16 turned around to where they are finally ready to do
17 something about that.

18 A After the legislature this time finally
19 passed two bills on it.

20 Q That's right. But it took legislative
21 action to do that, because of the action on the part of
22 the City Council? In other words, the mere passage of
23 legislation is not enough?

24 A I wouldn't say is not enough. It
25 can be enough. Depending upon what type of legislation it

1 Cross - Silber

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2 in.

3 Q In the case of Mitchell Lake.

4 A It was cooperative legislation.

5 JAMES GILBERT: We are getting into

6 kind of deep water now, Mr. Lee.

7 (Laughter).

8 MR. LEE: All right. I wouldn't call
9 it deep, Your Honor.

10 JAMES GILBERT: Maybe it is too
11 shallow, then.

C. E. - Silber

Questions by Mr. Idar:

Q At any rate, it is your opinion that single-member districting would, in effect, crystallize your delogation or fragmatize it? I have forgotten exactly what the word is you used, but is that your opinion?

A That is my opinion.

Q And, you have no expertise, you are not a political scientist, and you don't base it on any study you have made?

A I base it on political experience, not science.

Q One term in the legislature?

A One countywide election trying to get elected as an unknown where you have to reach in the west side, the south side, the Black district and all over-- and in a runoff election.

Q Where do you reside?

A I live in the northeast part of San Antonio.

Q I wonder if you could step down and just point to it on the map?

A It is in 1204, in census tract 1204.

C. E. - Silber

Q Terrell Mills, somewhere in that area?

A Right here. (Pointing)

MR. IDAN: I believe that is all.

MR. McDANIEL: I have a few questions
on redirect, Your Honor.

JUDGE GOLDBERG: All right.

REDIRECT EXAMINATION

Questions by Mr. McDaniel:

Q Mr. Silber, do you have an opinion why
there are no Mexican-Americans in the present legis-
lative delegation from Bexar County?

A Yes, sir.

Q What is it?

A Because of the incumbency of the present
representatives-- there hasn't been a great turnover
in representation in Bexar County.

Q Do you feel that this is because they
do represent the interests of the Mexican-American
community effectively?

A Yes, because when they haven't there
has been more Mexican-Americans on the delegation.

Q All right. And, am I correct in con-
struing your discussion with Mr. Kason; has it been

1 1002 Redirect Examination - Silber

2 your opinion that there has been no way to include
3 110,000 of Bexar County with a community of interest
4 with Starr, Jim Hogg and Zapata County?

5 A Not apparently.

6 Q Is it fair to say that in your opinion
7 the one man-one vote principle creates in this instance
8 less effective representation?

9 A Yes, sir.

10 Q Would you explain to the Court what you
11 mean by that?

12 A Well, for instance, the people in
13 Terrell Hills and Alamo Heights who are tied in a
14 senatorial district that goes all the way to the
15 border have a community of interest with the people in
16 San Antonio; that is where the business is and that is
17 where their homes are, their schools and the like and
18 they are economic. They are part of the Bexar County
19 community of interest, not a part of Laredo's or the
20 agricultural areas around San Antonio. Now, they would
21 be, in my opinion, better off-- at least I would rather
22 have diluted representation and have some representation
23 that was direct to me than to call the senator from
24 Bexar County, Senator Bernal or Senator Rothman, and
25 they say "Well, you are not in my district, you have to

1 **Redirect Examination Silber**

2 go to Laredo or some other place to talk to your senator.

3 **Q** And, yes, in fact, are not in their
4 district, are you?

5 **A** I am not in their district.

6 **Q** You are in Senator Connally's district,
7 District 21?

8 **A** Right.

9 **Q** All right.

10 **MR. McDANIEL:** Thank you, Your Honor.

11 **JUDGE GOLDBERG:** Anyone else?

12 **MR. GEE:** Yes, sir.

13 **CROSS EXAMINATION**

14 **Questions by Mr. Gee:**

15
16 **Q** Mr. Silber, I don't think we have ever
17 met in person before but we have corresponded, as you
18 will recall. I would like to ask you this, sir: Are
19 you familiar with what portion of Bexar County was
20 combined with LaSalle and Zapata County and so forth?

21 **A** Generally speaking, yes, sir.

22 **Q** Well, it amounts to about 110,000 people,
23 more or less, who constitute the core of the Republican
24 voters in San Antonio.

25 **A** Yes, sir.

C. E. Silber

Q Do you think that was just a coincidence, Mr. Silber?

A Well, nothing is coincidental. There are many reasons that I could speculate why it occurred. And, you have two senatorial districts that don't want them.

Q Well, Mr. Silber, one last question. From our prior associations I believe you to be an honest and candid man; you have been venturing opinions this morning, so please tell the Court whether in your opinion that is not an outright political gerrymander.

A I think it is a gerrymander.

MR. GEE: Thank you.

JUDGE GOLDBERG: Any further questions?

MR. McDANIEL: I would like to ask one in light of that last question.

REDIRECT EXAMINATION

Questions by Mr. McDaniel:

Q Would there be any more community of interest between Jim Hogg and Zapata counties, for example, with 110,000 citizens, out of somewhere else in San Antonio?

A No, sir.

1 282

2 MR. McDANIEL: Thank you, Your Honor.

3 JUDGE JUSTICE: I have two or three
4 questions.

5 QUESTIONS BY JUDGE JUSTICE:

6 Q Mr. Silber?

7 A Yes, sir.

8 Q We have had some testimony in this trial
9 about some rather appalling conditions of poverty in
10 the so-called barrio section of San Antonio. Can you
11 detail to me any specific legislation which was pro-
12 posed by any member of the House delegation which would
13 alleviate some of these conditions? And, I refer
14 specifically to such things as bilingual education or
15 adult education or to try to improve the quality of the
16 English, say, for the members of that area or health
17 care centers or some type of welfare legislation that
18 applies specifically to this area.

19 A I don't know the origin of this legis-
20 lation on such notice, as to who the authors were, but
21 there were several bills on bilingual education.

22 Q Were any of them proposed by members of
23 the House Delegation from Bexar County?

24 A I don't recall that there were, sir.

25 Q Was there any legislation proposed by

any of the House members from San Antonio that related to welfare spending or anything of that nature?

A Well, I think some of the House members were co-authors of the constitutional amendment to raise the ceiling on welfare, which was supported by the Bexar County delegation.

Q Do you know what the vote was, I mean, as between the members of the Bexar County delegation? How did the vote stand on that particular issue?

A I think the majority, not unanimously, but I could not-- I would have to go to the record.

Q Was there any legislation which was introduced by any member of the House delegation which dealt specifically with the health care of this particular group in San Antonio?

A No, sir.

JUDGE JUSTICE: I have no further questions.

JUDGE GOLDBERG: Mr. Eason, did you--

MR. EASON: No, sir, Judge Justice covered it.

JUDGE GOLDBERG: Anyone else? Everyone has spoken his piece?

MR. MC DANIEL: I have one other piece of evidence I would like to offer at this stage of this case, Your Honor. It is not a live witness, it is a stipulation which has been edited a little and added to by Mr. Har, which is fine with me, and it has been signed and agreed to by myself, Mr. Har and Mr. Eason. I would like to read it to the Court, if I may.

JUDGE COLANINNO: Proceed.

MR. MC DANIEL: I think perhaps this does bear on the issue before the Court directly. Leaving off the formal parts, one, that for the 59th Texas Legislature, 1963 -- 1964, Bexar County was a multi-member district for the election of seven representatives at large to the Texas House of Representatives; that the Representatives elected from Bexar County to the 59th Texas Legislature, 1963 -- 1964, were R. L. Vale, John C. Almaraz, Joe J. Bernal, Red Barry, John Johnson, Glen Gutman and Tom Lee. John C. Almaraz and Joe J. Bernal are Mexican-Americans, and R. L. Vale is of a mixed parentage with his father being Anglo-American and his mother Mexican-American; John Johnson and Glen Gutman were both Anglo-Americans, that Tom Lee

1 is a Chinese-American. That for the --

2 SENATOR MAUEY: Now about Red Barry?

3 MR. MC DANIEL: I left out Red Barry,

4 I am sorry. He is dead, but he was Anglo-
5 American also. For the 62nd Texas Legis-
6 lature, 1971 -- 1972, that of the ten members
7 of Bexar County there are nine Anglo-Americans
8 and the 10th is R. L. Vale. And, further in
9 the same Legislature Joe J. Bernal is serving
10 as State Senator. My point being that in the
11 59th State Legislature the swing vote on the
12 Bexar County delegation was a Chinaman. Thank
13 you, Your Honor.

14 JUDGE GOLDBERG: Are you trying to make
15 our puzzle Chinese? Now, does that complete
16 all of the testimony?

17 MR. IDAR: Is the State resting at this
18 time, Your Honor?

19 JUDGE GOLDBERG: I asked if there was any
20 further testimony?

21 MR. IDAR: We do have one witness in
22 rebuttal whenever they rest their case.

23 MR. CUREY: I have a summary of the
24 deposition.

25 JUDGE GOLDBERG: He is going to read from

the deposition. Do you want to put on your witness after the deposition has been read -- or summarized?

MR. LUNA: Well, I think I would, yes, sir, Your Honor.

JUDGE GOLDMAN: All right. Proceed, then, Mr. Curry. Do you have something?

MR. LUNA: I just wanted to say, Your Honor, that for the Democratic Party we have rested. It is my understanding that all of the exhibits listed on the pretrial order and the amended pretrial order in the Tyler and Dallas causes, I presume, to be admitted and have been actually admitted.

JUDGE GOLDMAN: We are going to, as I say, put it in all side knots and close and all that, but let's get all the testimony in -- live or quasi live.

MR. CURRY: May it please the Court, Al Curry for the State. And, I am simply going to briefly, very briefly, summarize depositions that relate to this matter. First of all, in connection with the deposition of the Attorney General. His deposition will reflect that his staff -- that he personally worked with his

staff, that there were several staffs

990

required to work on preparing these plans,

including the Lieutenant Governor's staff

and the House staff as well as the Attorney

General's staff. And, as the record reflects,

there were several public meetings, that there

were discussions regarding Houston, Dallas and

Bexar. The decision in Houston was primarily

resolved as a result of the communications

from Houston and the request of the Houston

delegation on single member districts. That

in the course of this planning there was no

decision to the contrary as far as Dallas and

Bexar is concerned, but in fact they followed

the historical fact that there had not been

single member districts there before. There

was a distinction with Houston; Houston in the

prior apportionment not actually had something

less than at large election. It has three

districts from the county at which there were

several places within which the Representatives

ran at large. The primary guideline that he

testified to was the one man -- one vote; that

his staff was instructed and cognizant of the

requirements of the Constitution and the

1 proposals in the Davis case. Each
 2 of the members of the board repeatedly stated
 3 that they did not instruct anyone or take into
 4 account color in determining these districts.
 5 The Attorney General stated that, frankly, as
 6 far as his personal philosophy was concerned
 7 he could go either way -- as far as his personal
 8 philosophy was concerned as far as single member
 9 or multi-member districts -- but in this instance
 10 they chose the multi-member districts for Dallas,
 11 Burr and the other county. And, in his opinion
 12 it was fair and it did not discriminate and did
 13 not operate to discriminate and was not intended
 14 to do so. Mr. Calvert, a member of the board,
 15 testified in substance that one of his guidelines
 16 was that he wanted to do what the people wanted,
 17 and to a great degree he relied on the Attorney
 18 General and the Lieutenant Governor and their
 19 advice and counsel. He was very concerned that
 20 it be Constitutionally he was counseled and
 21 advised by the Attorney General that it was,
 22 and therefore he was agreeable to signing the
 23 act that was proposed and enacted by the board.

1 MR. CURRY: Bob Armstrong, a member 992
2 of the Redistricting Board, did testify, and
3 his deposition is filed.

4 Mr. Netscher testified that he had many
5 plans, that there were public meetings, and, as
6 far as the senatorial districts were concerned,
7 in summary the Speaker of the House testified
8 that traditionally and historically one House
9 more or less let the business of the other House
10 be somewhat guided and directed by that House,
11 and, therefore, he did not to a great degree
12 get involved at all in the Senate districting
13 plans for Houston.

14 As far as the multimember districts are
15 concerned, although he is one of the members of
16 the Board that did not sign this Act, he states
17 that his personal opinion is that multimember
18 districts are preferable, and he strongly feels
19 that way, although in this instance he did not
20 approve this particular Act.

21 The staff, Greg Neoslar and Bob
22 Spellings from the Lt. Governor's Office, depo-
23 sitions are on file. Mark Fisher from the
24 Legislative Council's Office deposition is on
25 file. They will show that each of these

gentlemen were involved in the work over the 993
years in the respective Houses in preparing
legislative redistricting and that they had
worked on these jigsaw puzzles and put many of
them together, and they finally got down to
the one that they thought that everybody
accepted.

I would at this time call the atten-
tion of the Court that Barbara Jordan -- Senator
Barbara Jordan of Houston, her deposition was
concluded yesterday morning in line with the
agreement of the parties, and I have the
original, which was returned to me for filing.

I would like to call the Court's
attention very briefly to a portion of that
deposition.

First of all, I would direct the
Court's attention to the single member district
of the House -- the deposition will reflect
that this was prepared by Bill Young, the
young man who was our associate counsel in
the case and who took the deposition, and he
just simply said that he used the census reports
to follow the color scheme that he prepared,
which showed yellow being 24 to 30 percent black

1 population within the census tract, blue being
2 51 percent to 75 percent black population with-
3 in the census tract, red being 76 to 100 percent
4 population black within the census tract.

5 For the purpose of the record I would
6 call the Court's attention to the fact that this
7 exhibit, as other exhibits that each of us has
8 prepared, the Plaintiffs reserve the objection
9 as to its accuracy. They assume that what is
10 represented by Counsel is accurate, but it is
11 what the census reports reflect that should
12 control, but with that objection the exhibit
13 was used.

14 In this connection, may it please the
15 Court, Senator Jordan who is a black senator
16 from Harris County, testified that in her
17 opinion, examining this, that in her opinion
18 there were five what she termed safe black
19 districts from which a black could be elected.

20 She also testified that in her opinion
21 there were two additional districts, which in
22 her opinion were possible districts, from which
23 a black could be elected.

24 In connection with Senatorial District
25 11, which is the one primarily in dispute in

1 Harris County, she was asked by her attorney 935
 2 whether or not the new districting plan destroyed
 3 any possibility of a black being elected from
 4 that district.

5 Her testimony was, "I do not concede
 6 that I could not be elected from the new dis-
 7 trict. It would be difficult for an unknown
 8 person, but I believe that I would be able to
 9 direct my appeal to the citizens of that district.

10 In addition, the deposition of Henry
 11 Braswell was taken Monday morning by Mr. Berry
 12 in connection with this matter, and I would
 13 very briefly just read three short portions
 14 from this deposition.

15 He was asked, "Under the districts
 16 that were ultimately drawn and unless this suit
 17 otherwise affects them, would you say that there
 18 is now of an opportunity to elect at least two
 19 conservative Democrats to the State Senate from
 20 Harris County?"

21 Answer: "I would say under the pre-
 22 sent district that it would be possible for two
 23 conservative Democrats to be elected to the
 24 Senate, two liberals and one Republican, which

1 I think is a pretty fair cross section." 99b

2 He was asked to identify the parts
3 of Northeast Houston as being a black area
4 which he agreed, "has a pretty heavy black
5 population. However, as I said, the black
6 population has spread out more over the county
7 in recent years."

8 Question: "In the senatorial district
9 lines in Harris County, as you have presently
10 drawn, do you have an opinion as to whether
11 or not it would be possible for a black to be
12 elected as a State Senator in any one of these
13 new districts?"

14 Answer: "I would say it would be
15 possible for one to be elected in any."

16 Question: "Specifically which district
17 do you think it would be possible?"

18 Answer: "I think it would be possible
19 in any of them if we would just -- we have just
20 elected a black Councilman city-wide. We have
21 elected two members of the School Board, black
22 members of the School Board city-wide, both
23 against whites. We have elected a Latin-
24 American city-wide -- I mean school district-wide
25 to the School Board. If that is any criteria,

and I think it is, a capable black could be 997

elects against a white in any one of the districts."

That concludes our summary of the legislation for the State, Your Honor.

JUDGE CHAMBERLAIN: Mr. Lee, do you have a—?

MR. LEE: I would like to call Mr.

Mr. Cherry, Your Honor, and ask him

MR. CHAMBERLAIN: The State has

recused, Mr. Cherry?

JUDGE JUSTICE: Yes, it was so stated.

NEUTRAL TREATMENT PRESENTED BY THE NEUTRAL INTERVIEWERS

MR. CHERRY

a witness called by the Neutral Interviewers, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

27 - Garcia

998

DIRECT EXAMINATION

BY MR. IDAR:

Q Will you state your name for the record?

A Mr. Garcia.

Q And what do you do, Mr. Garcia?

A I am a practicing attorney.

Q And are you from San Antonio?

A Yes, I am.

Q How long have you practiced?

A Since 1951.

Q Were you born and raised in San Antonio?

A Born and raised.

Q What part of San Antonio were you raised in?

A In the southwest side, in the shadow of the stockyards.

Q Would that be within -- I am going to refer to Plaintiffs' Exhibit XI-2.

Is that within the area designated by an orange outline on this map (indicating)?

A Yes, it is.

Q And where did you go to law school?

A St. Mary's University.

1 DE - Garcia

93b

2 Q Are you practicing by yourself or with a
3 firm?

4 A We have a partnership, Garcia, Hernandez
5 and Campos. We have two associates, Henry Saltram and
6 Representative Robert Vale.

7 Q I don't know whether you had an opportunity
8 -- some of the witnesses have sat in the courtroom and
9 listened to the proceedings. I had hoped that you might
10 have an opportunity to at least become familiar with some
11 of the proceedings that went on yesterday, because our
12 main object in getting you on the stand is to rebut some
13 of the testimony adduced yesterday, but we will see how
14 we can do.

15 Now, I understand that -- or do you know --
16 let me rephrase it. Do you know Judge Hernandez?

17 A Yes, I do.

18 Q Testimony yesterday was adduced to the
19 effect that he was first appointed to a district bench
20 and thereafter he ran and got elected without opposition.

21 A That is correct.

22 Q Was that the only time that he ever ran
23 for office?

24 A No, Judge Hernandez ran in 1962.

25 Q For what?

DE - Garcia

1000

A Against Judge -- 1942 -- against Judge McCallum Burnett, who was Judge of the County Court-at-Law No. 1. He was defeated. That was a county-wide race.

Q Was that the only other time that he ran prior to his appointment to the district bench?

A Yes, I believe that that was.

Q All right.

A In 1944 he contemplated running again for one of the county benches, but he did not, it is my recollection.

Q Now, what about -- I believe it was H. F. Garcia, is it?

A Yes.

Q Is that his initials?

A Hipolito, H-i-p-o-l-i-t-o. We call him Hippo.

Q Do you know anything as to the way he managed to get himself elected?

A He was appointed to County Court-at-Law No. 2 by the Commissioners Court when Judge Charles Grace, who was then Judge of County Court 2, was elevated to the position of County Judge by the Democratic Executive Committee. This was after the death of Judge Charles Anderson.

10 - Carlos

1001

Q And did he thereafter run for that opposition as an incumbent?

A He has thereafter run without opposition on at least the occasions that I know of.

Q Now, the names of James Gutierrez and Mike Hernandez also came up, I believe in connection with Precinct -- is it Precinct 1 in San Antonio?

A Precinct 1, that is correct.

Q Justice of the Peace?

A Yes.

Q Do you know anything as to the background of these two individuals?

A Yes, when Judge John Ogden left the bench, he retired. Johnnie Hernandez and Jimmy Gutierrez ran for this bench, and Johnnie Hernandez won. This was after Johnnie's defeat in the race against McCallum Barnett.

Then Gutierrez is now a Justice of the Peace. He subsequently ran and won, as I recall -- no. After Judge James Wilson was elevated from the J. P. Court to the Criminal Bench by appointment, Jimmy Gutierrez was appointed a J. P., and he has subsequently run and been re-elected.

Q Now, we're talking mostly about situations where we had the single member type concept involved, in

1 DE - Garcia

1002

2 contrast to a multimember type race county-wide, are we
3 not?

4 A Yes. The J. P. Precinct 1 comprises a
5 great portion of the area that is surrounded by the orange.
6 A lot of the Mexican-American area -- and it goes all the
7 way up into Alamo Heights, but the predominant make-up of
8 this particular J. P. precinct is Mexican-American.

9 Q Other names that came up yesterday involved
10 Dr. San Martin and Joe de la Garza, Jose Olivarez, Gilbert
11 Garza, Leo Mendoza and Felix Trevino. I think most of
12 these people were mentioned and testified to in connec-
13 tion with the City Council in San Antonio.

14 A Yes. I would categorize all these men as
15 establishment Mexicans. If you would like to know what I
16 mean, I would be glad to tell you.

17 Q I would be glad to have you tell the Court.

18 A In each instance I understand that reference
19 had been made to a certain group of men in San Antonio who
20 are politically wise and politically financially powerful.
21 Now it is the Good Government League. Back then it had
22 another name, and prior to that it had another name. The
23 names escape me, but on each occasion when they were for-
24 ing a ticket, they would hand-pick a Mexican, and each
25 one of these men was hand-picked to run for the City Council

1 RE - Garcia

1003

2 sometimes more than one, and I attribute their success in
3 winning with all sincerity to the fact that they were
4 running on a ticket, and they were able to get the vote
5 of those areas of San Antonio that don't generally vote
6 for the Mexicans, because of that fact, and, of course,
7 their voice on the Council was always rather feeble.

8 Harry Gonzalez was an exception to this.
9 Harry ran as an independent and won.

10 Q Do you know the record of Joe de la Garza
11 on the Council when he served?

12 A Very bad.

13 Q In what connection do you say that?

14 A In connection, really, this was not someone
15 that the Chicago community could communicate with, this
16 was not someone that they could go to and feel, "This is
17 someone who knows our problems."

18 Q Do you know whether or not these Chicago
19 communities you are talking about, particularly through
20 these people that you have termed establishment Mexicans,
21 are they ever given a chance as to what Anglo-American
22 confidence they are supposed to support?

23 A That's all we did find. It is all
24 decided. They are hand-picked. They are placed in cer-
25 tain positions. It is all decided beforehand. I will say

1 Mr. Garcia

1004

2 this. Dr. —: In the process of recruiting candidates for the

3 MR. McDANIEL: I am going to object to this unless he has personal knowledge

4 as to how these candidates are picked, and

5 he obviously does not, if he is an outsider, looking in.

6 Q Are you acquainted with the efforts made by the Good Government League at recruiting candidates from the west side?

7 A Yes.

8 Q Do you know of any efforts in the process of that recruitment or in that recruitment process whereby these people are ever given a choice as to whether they will have a say-so in who is to be running on the north side?

9 A Would you mind restating that, Mr. Idar?

10 Q My question is, in the process of recruiting Mexican-American candidates on the west side, these people that we have talked about, de la Garza and the others, that are contacted by the -- shall I say the agents of the Good Government League, looking for Mexican-Americans to go on the slate. Are these people ever consulted as to who they would like to see from other parts of the city, particularly the Anglo-American community --

1005

1 MR - Garcia

2 do they have an impact in the recruitment of the Anglo
3 candidate that is going to go on the GCL ticket?

4 A Well, first of all, the question as phrased,
5 Mr. Idar, you say recruiting people from the west side.
6 The only one of those men who have been elected to the
7 City Council who actually resides in the west side is
8 Felix Trevino. The rest of them do not reside in the
9 west side.

10 Q Let me rephrase it then. In recruiting
11 Mexican-Americans generally—

12 A Yes.
13 Q —whether they be from the west side or
14 any other part of the city?

15 A Well, the make-up is in this manner. Your
16 GCL has two organizations. One organization is what I
17 have always referred to as the Anglo or the white GCL and
18 then a subsidiary, which is made up of a group of men who
19 have either — who either have businesses on the west side
20 or who have some ties on the west side who are Mexican-Americans.
21 They have their meeting. The Anglo or the white GCL has
22 their meeting. There is liaison between the two, and then
23 a decision is made somewhere down the line.

24 Q Do the two ever meet together?

25 A I imagine socially.

10 - Garcia

1006

Q I mean officially for the purpose of slating candidates.

A To my knowledge they never meet to discuss decision-making.

Q There was some testimony yesterday as to the apathy, the fact that the Mexican-Americans in this area that we are talking about, the west side of San Antonio, that perhaps his problems were due to the fact that he just isn't participating fully in the political process.

Now, you were born and raised on the west side. Can you give us a brief idea as to what was the character of that area as you were growing up?

A The character of that area as I was growing up, Mr. Idar, was that the make-up primarily in the area of Durango, Sanders, Montarrey, Comaraw, Travis, Houston -- all of these are streets that are within this area that run east and west -- that the make-up of that particular area of the town was a mixture of Mexicanos and Anglos, a scattering of blacks and an occasional Chinese.

As the years progressed, the Anglos began moving out of that community or that area of town to the north, northeast and northwest. It left that particular area of town almost 100 percent Chicano.

The reason for this I am also aware of,

RE - Circis

1007

having made a study. The people as they were progressing in their employment were able to better themselves; were seeking better neighborhoods. F.H.A. financing was made available to whites, where it was not made available to Negroes and blacks in those areas of town, because the objection was that if a move were made, which would result in an imbalanced situation, that they were justified in not extending financing, so, as a result, this area got to the condition that it is in now, and it is bad.

(No omission here.)

Rebottal - Garcia

1008

Q And that is so for the reason of the development of this City to the north and west?

A That's correct.

Q And the east?

A That is correct.

Q Are you familiar with the practice of restrictive covenants that was present at the time?

A Oh, yes.

Q To what extent was this an influence in the deterioration of that west side area?

A It was practiced almost consistently. It happened to new members of the G.G.L. when they tried to buy in Los Angeles Heights, which is north of this area and off of Blaine Road.

One particular man who is now a member of the G.G.L. presented cash money and I have personal knowledge of this transaction. And they told him that they couldn't sell to him because he was a Mexican and there were restrictive covenants. He now lives in Glendale Park.

Q Did the FHA go along with the restrictive covenant situation on passing on loans for financing homes in that portion of the City that we are talking about?

A Yes.

Substantal - Garcia

1009

Q Now, this is an exhibit that we are submitting in substantial, Your Honor.

A For that reason it was not listed in our list of exhibits. I would like to have the Clerk -- according to my records, it should be S.I.-25.

(Whereupon the Clerk marked Plaintiff's Exhibit XI-25 for identification).

Q Now, before we get into this, let me

just button up one other thing I mentioned a minute ago. Some reference was made yesterday to the fact that you also ran for District Judge in Bexar County?

A That's correct.

Q And that there was certain factors that were not noticed for your defeat. I wonder if you can tell the Court as to the two times that you ran for the District bench and the reasons that you chose to run and whatever might have been the outcome?

A The first occasion was in 1944. The reason that I run, it is not quite settled in my own mind why. I do know that at that time I was contacted by the then president of the San Antonio Bar Association, who told me that the Governor wanted to appoint a Mexican-American

Rebottal - Garcia

1010

to a district bench and he said that several of the lawyers had gotten together and they had recommended me to him as the best-qualified. And there were several meetings and several discussions and reports were coming to me almost weekly.

At that time we planned a vacation and I was asked to leave numbers and addresses where I could be contacted. And when I got back, still the discussion was taking place.

This was when John Connally was Governor and somewhere along the line I was not appointed. And the reason given was that he decided to appoint a man who had been his former roommate.

I decided at that time that I was going to run for the district bench and I ran against the then incumbent, Judge Daleo Finch. Judge Finch had been appointed to the bench 16 years before. He had never had any opposition. He was a man approximately 70 years of age and there had been some indications that he might possibly retire.

I lost. Borrowing the words of the Reverend yesterday, who testified, Reverend Brown, in reverse, I did not receive the esteem and admiration of the majority of the voters. I got, I believe, 47 percent

Rebuttal - Garcia

March - 1961 1011

of the vote.

Q All right. I wonder if you could proceed to your next race?

A The next race was in 1963. Judge Walter Lockridge retired from the 37th Court and my opponent was Richard Woods, and I lost by 1100 votes in that race.

Garcia-Rebuttal

112

Q Okay. Getting back to the line of questioning I was following, your testimony as to why this area has deteriorated, the west side area in San Antonio, you indicated part of it was the pattern where the Anglo-American was moving out into other parts of the city and the Mexican-American was restricted from moving in. And that part of the reason for that were those restrictions with certain restrictive covenants that were the widespread practice of the times. Now, it is my understanding that those covenants are no longer recognized; by action of the courts, the state is now forbidden-- the state courts are forbidden from enforcing them? Is that correct?

A That is correct, but I understand that there are still some deeds containing these restrictive covenants being used at this time.

Q Do you practice any amount of real title-- do you have any extensive real estate practice?

A Oh, yes. Yes.

Q Have you seen deeds in examining titles?

A No. Information came to me as late as last night and I just understand from information that came to me that they are still being used.

Substant - Carrie

1013

of the records - (RECORDS'S NOTE: Plaintiffs' Exhibit

you as subject B-36 was handed to Mr. Curry for his

purpose of your examination) defendant and wife and

attorney and the defendant's attorney, and

Q: No I am going to show you a document here.

This is marked as Plaintiffs' Exhibit B-36 and it is

a certified copy obtained from the office of the County

Clerk of Bexar County. I would like to have you describe

that instrument to the Court and, in particular, read to

the Court the type of restrictive covenant that we are

talking about that is contained in that instrument.

A: Yes. This is a notice of restriction which is

filed for record in the deed records of Bexar County

and it is from Walter W. McAllister, and wife, Leona

M. McAllister, to the public. And it involves some two

tracts of land, one involving a hundred acres more or

less, and one involving a hundred and eighty-seven

acres, more or less, located in Bexar County, which

deed contains among other restrictions, the following:

"No lot, tract or subdivision thereof

shall ever be sold, leased, devised or con-

veyed by deed, lease, gift or otherwise, to

Mexicans, Negroes, or persons of either

Latin-American or African descent, nor shall

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1 Submittal - Garcia

2 any lot, tract or resubdivision thereof,
3 ever be used or occupied by Mexicans, Negroes,
4 or persons of either Latin American or
5 African descent, except as household ser-
6 vants?

7 JUDGE WOOD: What is the date of that
8 deed, Mr. Garcia?

9 A The date of that deed is December the
10 28th, 1949.

11 JUDGE WOOD: What is the relevance of
12 this?

13 MR. IDAR: Your Honor, we are alleging
14 that the Mexican-American, as a class of
15 people, in the past in Texas have suffered
16 from a number of customs, practices, traditions
17 and so forth, some of it a de jure and some of
18 them as de facto character and that all of
19 this is relevant to establish our conditions
20 under the Chevis case, and so on and so forth.

21 JUDGE GOLDBERG: All right. The testi-
22 mony will be received and we will look at it
23 through our usual judicial binoculars.

24 Q All right. One other fact I would like
25 to establish: Can you identify the person who signed

1 Garcia - Rebuttal

2 that dead?

3 The former mayor of the City of San
4 Antonio.

5 Q How long was he mayor in San Antonio?

6 A Oh, about six years.

7 MR. TARR: That is all, Your Honor.

8 I assume that is admitted in evidence - that

9 exhibit.

10 JUDGE COLLEMAN: With all of the reser-

11 ved conversations heretofore declared.

12 MR. TARR: Thank you.

13 JUDGE COLLEMAN: Now, has everybody

14 rested - all parties? If you haven't, stand

15 up and say you haven't.

16 MR. RICHARDS: We have not rested. We

17 have some items, exhibits still to put in

18 and no live testimony.

19 JUDGE COLLEMAN: All right. Now, let

20 me make a suggestion. We will take a ten or

21 fifteen minute recess, during which time I

22 would ask you if you could get all of that

23 information straightened up and then we

24 could proceed to decide when we go from

25 there. We will give you fifteen minutes, five

1916

more than usual.

MR. GARCIA: May I be excused, Judge?

JUDGE JUSTICE: Yes, you are excused.

(REPORTER'S NOTE: Whereupon there was
a fifteen minute recess)

JUDGE CULBERTS: Well, are we

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ready for the final

minutes. It is not physically

minutes, but --

JUDGE CULBERTS: I said final

minutes.

MR. RICHARDS: We do have several

exhibits, Your Honor, we would like to make

certain are part of the record.

JUDGE CULBERTS: Proceed.

MR. RICHARDS: I have marked as exhibit

CA-143, which is our style exhibit number,

23, which are certain minutes and programs of

the Dallas City Council that are all, I think,

well within our agreement of terms of copies

of minutes out of the City Council records.

JUDGE JUSTICE: Is this listed in your

final pre-trial order?

MR. RICHARDS: No, sir, it is not,

because these are matters coming by way of

rebuttal or we have now found are not in the

record originally.

JUDGE CULBERTS: Has everyone seen

these?

MR. RICHARDS: I have tendered them

Mr. Lane just as I began, and I would so in

the process. This is the only thing 1018
 I think that there could be any question
 about. Exhibit Number 95 is perfectly by way
 of rebuttal; it is the resignation letter
 certified by the Secretary of State of S. M.
 Wright. Plaintiff's Exhibit Number 96,
 because we have been unable to ascertain
 whether it was indeed in the record or not,
 are the exhibits that were pro-offered during
 the course of Senator Murry's testimony to
 the Legislative Redistricting Board. We have
 been unable to determine if that was part of
 the record in this case and we want to be
 certain it is, so 96 is a compilation of
 matters that were considered during the testi-
 mony of Senator Murry, to the Redistricting
 Board. Then, as we have promised, the
 Plaintiffs, as part of their case in chief,
 to produce at least what we considered to be
 a better plan showing the possibility of
 minimizing the deviations that exist in the
 present house plan. So, we have, then,
 pursuant to that an Exhibit 97, which is a
 legal description and summary deviations in
 150 Legislative single member district plans

1-19

in the State of Texas.

JUDGE CHAMBERS: You mean --

Let me get one thing straight, you are

attacking all 150?

MR. RICHMOND: We are attacking the

plan of the grounds of deviation.

JUDGE CHAMBERS: All 150 electricists?

MR. RICHMOND: Well, we have attacked

the plan on the ground of deviation in the

sense that we think that in order to show

unexcused deviation, we have to show -- or

we want to make an element of our proof --

evidence that it is perfectly possible to

have a better plan, I.e., a plan with minimal

deviation.

JUDGE CHAMBERS: Are you attacking Lubbock,

are you attacking Tarrant? There is no

evidence in this record --

MR. RICHMOND: We are clearly attacking

them, yes, sir, as it has been made clear all

along. The time element we got into we did

not propose to offer proof as to one aspect

of our theory -- that is, the theory that came

out from under Chavez in terms of discriminatory

impact upon a minority, so we couldn't

organize a minority, so we couldn't 1:20

organize and put in proof on some Counties,
such as Travis, Tarrant and what-have-you.

But, we clearly have attacked these districts
on the grounds of deviation.

JUDGE GOLDENRO: On deviation?

MR. RICHARDS: And, we consider it
to be simply part of our burden -- or at
least we want to make it part of our burden --
the fact that a superior plan could indeed
be drawn. And, that is tendered for that
purpose; it is not tendered for the purpose
of saying to the Court "We want to see you
use this plan to cut up the State of Texas",
but it is part of the determinates.

JUDGE GOLDENRO: Is that the house?

MR. RICHARDS: It is the house, and
of course, we had the State cut up as our
plans show. But, it is offered at this
stage on an affirmative part of the case.

Exhibit 98 is a State-wide map showing the
Legislative Districts. Exhibit 99 are of
four major cities we have shown individual
number districts to minimize the deviation.

JUDGE GOLDENRO: Four cities?

OS 1 2nd time we Mr. RICHARDS: Your Honor 1021

is 101, would be 100 -- I am sorry, Countess,

I should have said -- Tarrant is 101 and

Harris is 101. And, we would offer these

exhibits for the record.

THE COURT: You say you are

attaching this present plan on the basis of

deviation? We have had an testimony to this

effect, up until this point.

MR. RICHARDS: We are relying -- and

this is one of the patterns I want to get

into. The deviation, we think, is established

by the exhibits, and that is one of the

patterns I want to make very clear right now;

is that we either have to offer all the census

figures or -- We can get an agreement, I

think, from the State --

THE COURT: You are talking about

population deviation?

MR. RICHARDS: Population deviation.

THE COURT: What districts do

you say are the deviation?

MR. RICHARDS: Well, I think the

deviation, I suppose, is Dallas

County.

JUDGE GOLDBERG: We have gotten 1022

the detailed testimony on Dallas and Buser
and Harris, haven't we?

MR. RICHARDS: Yes. On that -- Well,
as I see it, the cases are carrying several
theories along with it and we have made that
clear in our pre-trial order and it has been
our position throughout that this plan that
was adopted for the house -- not the Senate
-- was unconstitutional, because of deviation
and that is our position. We think that the
determination of the existence of deviation
is simply an arithmetic matter, looking at
the census tracts. And, we intend to argue
that and brief that point to Your Honors.
There is a pre-trial order, and we have been
in that position from the outset.

JUDGE GOLDBERG: All right.

MR. RICHARDS: I don't mean to compli-
cate the case at this late state, but this is
our position.

JUDGE GOLDBERG: You are entitled to
any position that you wish.

MR. RICHARDS: These are the exhibits,
then, that we offer.

JUDGE WOOD: Well, if they involve 1924
something that is new they are not rebuttal.

MR. LUNA: I don't know what they are.
I haven't seen them.

JUDGE GOLDBERG: What are you referring
to?

MR. LUNA: Well, for instance, Your
Honor, they offer on one of them here a letter
from the Trinity River Authority from S. M.
Wright tendering a resignation. If this
comes into evidence we would need to put on
testimony to show why--

MR. RICHARDS: They developed it in
their case; it is proper rebuttal. It is
authenticated by the Secretary of State and
he has no objection to it. This is an
official record of the Secretary of State
and we can prove it without regard to his
agreement.

MR. LUNA: I don't contend it is not
authentic. I simply say that if it comes
into evidence-- I don't say it is inappropriate--
but if it should come into evidence our case
would simply call for some rebuttal on our
part-- very short, but some.

1925

MR. CUMMINGS: I think Mr. Luna developed the argument that Reverend S. M. Wright was denied an appointment to this Board because of a senator in this room. I think this is rebuttal to what Mr. Luna said. Reverend S. M. Wright was on the Board and he resigned.

MR. LUNA: I am not sure it rebuts. It confirms, because the instrument-- If it stands in at this time, it talks in very vague language about--

JUDGE CUMMINGS: Now, gentlemen, we started this trial with the idea that we were under a very severe time handicap. Now, if you think this matter of is such substantial significance in the determination of this case I suggest we will just have to go on and on and on and just forget about time tables and time procedure. And, as I said before, somebody is going to lose this case whether we win the law, somebody is going to want to take a trip to Washington and start knocking on our doors. I want you to be able to make your prime reservations and knock on the doors and make your arguments. Now, if you persist in this it is our duty to

hear anything and everything that you think is necessary to your case. But, I must call your attention repeatedly and boring and tedious as it may be, that you should give this some very heartfelt consideration. Now, whether Mr. Wright resigned and whether he was objected to by a senator really-- Really, now, do you believe that this is germane to the ultimate disposition of the issues in this case?

MR. RICHARDS: No.

JUDGE GOLDBERG: Well, let's go on, gentlemen.

MR. McDANIEL: Your Honor, I have some objections to this material, I suspect, from what has been said, though I have had no opportunity to review it. The thing that I point my objection to is the tending at this time of maps which are alleged to show better plans for less deviation of the state which may conflict with what I conceive to be a legitimate state policy which caused some of those deviations, and I certainly would want to look at those plans to see if they are objectionable in violating state or

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1 federal law, and I have had no opportunity to
2 do that.

3 JUDGE HOLMES: With respect to the
4 plans the Court will have a word or two to
5 say about that a little bit later on when we
6 conclude this case. But, with respect to the
7 tendering of this particular document, it
8 seems to me, Mr. McDaniel, that what you
9 should do is to object, either now or in
10 writing, to the documents, if you have any
11 objection to them-- to it or to them. And,
12 we in turn will consider the documents and
13 your objections, and we are perfectly
14 willing to receive your objections in writing
15 after the trial of this case. Isn't that
16 perfectly satisfactory?

17 MR. McDANIEL: Yes, sir, it certainly
18 is.

19 JUDGE JUSTICE: I might add that at the
20 pretrial in this case the parties were in-
21 structed to have a plan prepared.

22 JUDGE HOLMES: The plans we will get
23 to go on prepared. Now, go ahead. What other
24 tidying up do we need?

25 MR. McDANIEL: I have served the state

with certain interrogatories that we have had
 some difficulty having answered. The last
 series have now been answered, and I would like,
 if I may-- I have conferred with Mr. McDaniel
 and with Mr. Lane and Mr. Johnson and these are
 their answers, if you have objection to them.
 I inquired of the State if they knew of any
 legislative redistricting in the United States
 that was larger than-- had larger population
 than that of Dallas County, and they have
 answered that they know of no larger district.

MR. RICHARDS: I inquired of the State --
 not out certain figures on white and non-white
 population in Dallas County, census data for
 the years 1950, 1960 and 1970 and asked if they
 could confirm they were accurate and they have
 confirmed they were accurate, and I asked
 questions concerning certain white and non-white
 statistics for the State of Texas going back a
 number of years, and they have confirmed that
 those are accurate, so I am assuming that my
 interrogatories are on file and that this
 constitutes the answers thereto, as I understand
 it.

Is that fair?

JUDGE JUSTICE: As stipulated by the
 Defendants.

MR. LAMAR: Yes, Your Honor.

MR. RICHARDS: Thank you, Your Honor.

We never formally offered two depositions that
 were taken in Dallas, the Murphy deposition
 and the Zimmerman deposition, and we want to
 offer those now without summarizing them.
 And the Beck deposition, which I think we did
 offer.

JUDGE JUSTICE: What deposition?

MR. RICHARDS: Next, McNulty and
Kimmerman. These were all taken last week
and I think are all on file here, but we
never formally offered them.

And may we ask them two things, if we
could, as a final wrap-up, that the Court will
take judicial knowledge of the 1970 Census
census figures by trust, and if we file written
briefs, we can simply attach that information
without having to tender the entire --

JUDGE GOLDBERG: Yes, we certainly could
take that judicial knowledge of that.

MR. RICHARDS: Finally one item that came
up yesterday was about the Indiana statutes,
and I would like to ask the right, if I file a
written memorandum, rather than having to
physically list those statutes and put them in
the record, we can serve them and attach them
to our brief selected portions.

JUDGE JUSTICE: Sure.

JUDGE GOLDBERG: And if they are not
accurate, we will get them from the other side.

MR. RICHARDS: That is my tidying up.

JUDGE GOLDBERG: All right, sir.

MR. MC DANIEL: I have one tidying up matter

that I would like to get the Court's understanding on. As the Court is well aware, we have had a number of interventions, some of which have been reasonably recent as we proceeded along with the case. The State has not filed an answer, in short, to some of these interventions. Our thinking was that our original answers in this suit were sufficient answers to the interventions, and under the rules they could be and would be so considered.

JUDGE COLSON: We will so consider them, absolutely.

MR. LUNA: The same thing for the Democratic Party.

JUDGE JUSTICE: Yes. Incidentally, there has been no formal order, in so far as I know, relating to these class actions entered by the Court. I ask that counsel prepare such an order.

MR. WALKIN: Your Honor, if I might ask a question. Stuart Walkin in the Houston, Harris County case. I just heard Mr. Richards formally offer some depositions, and I was under the impression that the depositions were in evidence if filed.

JUDGE COLSON: He was just mentioning two

1 1031 or three that he wasn't sure were in.

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2 MR. MELKIN: Yes, sir. We also had some
3 which were received by the clerk's office
4 yesterday.

5 JUDGE GOLDBERG: Oh.

6 MR. MELKIN: And I was not here to make
7 a formal offer. I just assumed that all
8 depositions were in evidence. Is that right?

9 JUDGE GOLDBERG: All depositions that are
10 in the hands of the clerk will be considered
11 as filed and a part of the proceedings in this
12 case.

13 Is that satisfactory with everybody?

14 MR. MELKIN: Yes, sir, thank you, Your
15 Honor.

16 JUDGE GOLDBERG: Now, what else have we
17 got?

18 MR. IDAR: On this order as to the class
19 actions, Your Honor, what is it that we want to
20 recite there? Is the Court finding that we have a
21 class action?

22 JUDGE JUSTICE: Yes.

23 JUDGE GOLDBERG: Anything further?

24 (Pause)

25 JUDGE GOLDBERG: Now, I want to ask a

question. How many counsel at the table
has the irresistible impulse and the desire
to speak? Raise your hands.

(Laughter)

JUDGE GOLDEN: Any arguments --
stand up all that would like to argue this
case. I want to just see how many we are
going to have.

MR. RICHARDS: Does the Court want to
argue. If the Court wants arguments, I want
to argue.

JUDGE GOLDEN: We are going to want
argument.

MR. RICHARDS: All right.

JUDGE GOLDEN: We want argument, so I
want to see how many there are.

REPORTERS NOTE: Counsel arise in the
courtroom.

JUDGE GOLDEN: Now, is there any way --

JUDGE JUSTICE: That's ten of them.

JUDGE GOLDEN: Is there any way in
which -- we will take a recess -- you could
confer among yourselves so that -- we will
allow an hour and a half to be divided between
the Blacks, the Chairmen, the Republicans --

JUDGE JUSTICE: That's all of them.

JUDGE GOLDENBERG: You caucass among yourselves and decide how you want to use the hour and a half.

MR. RICHARDS: I don't think we will require that much time.

JUDGE GOLDENBERG: Well, we want you to have ample time. About this we don't want to be subject to a lot of criticism. We are going to try to learn over backwards. As far as the State is concerned, you will have equal time, and I assume that you could caucass among yourselves as to how you are going to handle it and so forth and so on. Is that satisfactory?

MR. JANOWSKI: Excuse me, Your Honor.

JUDGE GOLDENBERG: Surely.

MR. JANOWSKI: We have already done so, and may I make this statement?

JUDGE GOLDENBERG: Surely.

MR. JANOWSKI: In an effort to try to facilitate the presentation of argument -- actually, I do not think that the State will take over thirty minutes, but what we would like to do, and as much as we have notices

pending here, Motions to Dismiss —

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JUDGE GOLDBERG: Yes.

MR. JACOBSKI: — is to tie off the argument on those Motions to Dismiss. This is the only argument that we will make if in connection with that, and we will let that also be our argument for the entire case. I intend to present that argument except for a very brief argument by Mr. McDaniel on one phase of the matter.

JUDGE GOLDBERG: We just want to give you plenty of time to argue Motions to Dismiss, anything else that is within your mind and your heart that will help enlighten us. We want to hear you. We want to give you plenty of time. We are going to start at 1:00 o'clock, and by 4:00 o'clock we hope to adjourn this case. Is that satisfactory to everybody?

JUDGE WOOD: We feel like the arguments to us will be most helpful.

JUDGE GOLDBERG: And we will now stand in adjournment for an hour and a half to give you a chance to — oh, I'm sorry.

MR. CHEN: May it please the Court, it might help in determining the development of

argument to know whether the Court intends

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to receive any written memoranda.

JUDGE GOLDBERG: Yes, we will make the announcement with respect to the written memoranda at the conclusion of the arguments, but we thought it best -- after we hear the argument, the Court will take a ten-minute recess. We will then come back and advise you what further information or memoranda, et cetera, we would like to receive.

Is that a fair agenda for the afternoon?

REPORTERS NOTE: Various affirmative responses were heard in the courtroom.

JUDGE GOLDBERG: Everybody understands?

MR. JANOWSKI: May we then assume that we may proceed with the argument initially in order to get our Motion to Dismiss before the Court?

JUDGE GOLDBERG: Absolutely, and we will start at 1:00 and give you plenty of time to discuss and decide how you are going to present the argument.

MR. RICHARDS: Do I understand that the State is going forward with their arguments, and we will be put in the position to respond, rather than having the right to open and close?

1 **MR. JUSTICE:** He's not going to make 1037
2 any further argument of that. He will not
3 make any argument at the close. This will
4 be our argument.

5 **MR. RICHARDS:** Great.
6 **JUDGE WILLIAMS:** Gentlemen, I think now
7 we have reached the stage where we ask and
8 seek and we hope we will get you some enlight-
9 ment. In an hour and a half you should prepare
10 a very fine presentation to all of us.

11 **JUDGE JUSTICE:** Court is in recess.

12
13 **(REPORTER'S NOTE:** The Court then, at
14 11:40 o'clock A.M., January 6, 1972,
15 recessed until 1:00 o'clock P.M., at
16 which time it resumed.)

Argument - Jaworski

(REPORTER'S NOTE: Whereupon at 1:00 o'clock, P.M. on January the 6th, 1971, Court reconvened and the following proceedings were had)

JUDGE GOLDBERG: I assume you have concurred and allocated your respective times. Everyone please keep with their own time and I will not ask that you all join in in Auld Lang Syne, but let's keep the spirit of it.

Who will have the first argument?

MR. JAWORSKI: If it please the Court, it probably be very apropos for me to say that we did not interject ourselves into this case, Mr. Curry and I, the Attorney General of Texas called me and asked that I render service to the State, which I felt under the circumstances it was my obligation to do. I so responded on prior occasions to both the United States Attorney General and our State Attorney General and I felt under pressures-- I am talking about pressures of

Argument - Jaworski

1039

other obligations, I felt I should do so in this case.

I don't want the Court to gain the impression that the pecuniary the State has indicated in its inability to come up with the \$5,000.00 was due to my being in the case, because actually our service, Mr. Curry's and mine, is without any financial remuneration.

I think that it would be helpful to the Court, and this is why we chose to argue the motions to dismiss, to review some of the applicable legal principles here and bear those in mind.

I think the Court has listened very patiently to a lot of testimony and I think wisely and properly so. Everyone has been given the full opportunity, afforded every chance to present whatever might possibly be relevant. In our view the vast majority of what has been presented is not really relevant to the legal issues in the case. But these are matters that the Court can take into account after reaching its conclusion on what the applicable legal principles are.

Argument - Jaworski

It is our view-- it was from the beginning, and after having listened the last few days to the presentation of the evidence, it is our view with even greater certainty than at the outset, that there are no claims here presented by the Plaintiffs as to those complaints that I will address myself to upon which relief can be granted.

Mr. McDaniel will present the State's argument in connection with the San Antonio case, inasmuch as he primarily has studied that case, conducted the examination of the witnesses and as he has indicated, he would speak very briefly on that subject.

Some of the legal principles and concepts that I intend to argue to the Court, of course, will have applicability to the San Antonio case, as well as the other cases.

Now largely because of the confusion that has existed for some time in redistricting cases, we know that the Supreme Court, seven months ago in the *Chavis* case, wrote very extensively on the subject-- came pretty near exhausting the subject-- and this was done in order, of course, to furnish guidance, because

Argument - Janssah

1041

redistributing cases had become somewhat the vague
in some parts of the land and there had been some
confusion, but one thing has been made abundantly
clear now, and that is that the Plaintiffs, the
complainants, have a burden to show unconstitution-
ality, and I say to the Court that this is
a rather heavy burden. In fact, in some respects,
it is almost insurmountable and it is our position that
this burden has not been discharged.

I would think that the complainants
probably realize that. I base that on several
things that have happened during the trial of
this case. I base it on the nature of the
complaints. I base it on the complaints; I base
it on the complaints-- I base it also on some
of the pretrial memoranda that have been filed
here. For instance, the complainants in the
Harris County case, the Curtis Graves case, in
their trial memorandum, make no effort to
distinguish the Chavis case. No reference
made to it in the pretrial memorandum; no effort
to distinguish it, despite its very marked
applicability to this case.

It is also clear that a number of the

Argument - Javoriski

1042

other complainants have not seen fit to deal with the full import of that decision. I must come to the conclusion that they recognize the barriers in their direction. Some that didn't deal with it through their pretrial memoranda tried to introduce some evidence which the Court heard, and which I do not have to cover in detail, is an effort to try to show a distinction between the situation in Indiana and the situation in Texas. And the effort that was made through one of the witnesses, of course, on cross examination showed that the witness was not possessed with information at all of any distinction upon which this Court could rely.

Now actually, I hear that a decision rendered only a few days ago is also one on which the complainants want to rely. At least they feel that there is some comfort to be gained by invoking that decision, and it, too, will be discussed by me with the Court because I can find nothing in it that touches this case.

Arguments - Jaworski

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What we really get down to in presenting our arguments to the Court is to say that we do have here, as recently as seven months ago, pronouncements of the United States Supreme Court that we feel makes the burden of this Court a much easier one than would have been true a year ago.

Well, let's dispose, as we view it, of some of the contentions here made through the vast amount of evidence introduced in the last few days. We think that the lack of nicety in a drawing of the lines is not a matter of significance. It may even have been awkwardly done. It may have been done even inconsistently in some respects. It may have been done in a way that makes some campaigns more expensive than had been true before. Yes, it may even have cancelled out, diluted some of the votes that have previously been depended upon by some of the candidates in some of the districts. Now we don't conceal that any of these things took place, but we say that we could conceal them.

Take these matters that I have just

mentioned, singularly or take them

collectively and they still haven't

discharged the burden that is necessary

for them here to present a claim upon

which really can be granted. They must

go further; they must show that what has

been done here was done unconstitutionally.

And this is what you will see, may it

please the Court, that in the Chavín

case, is presented time and time again.

very guardedly; the Court points out that

what is objected to must be shown to

have been done unconstitutionally.

Differently stated, the Blacks,

the Mexican-Americans, in my judgment

must prove, based again upon the Chevy

case, that the redistricting that they

are attacking here can be explained only

In racial terms. Now is their burden.

and this, we say, they have wholly failed

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Now, I will take up the Chavis

ness in a moment -- not to discuss the

Q -- I know the Court has read the case.

All I would like to do is just to emphasize

Arguments - General

a few of these pronouncements that we believe are so controlling, not only in that case, but are controlling in this particular case.

Well, let's take the complaint, for instance, that was filed in Harris County by Curtis Curran. The gist of his complaint is that now he says there is no Senatorial district in Harris County, Texas that has a majority of the white voters. What case is there that says he is entitled to that? The United States Supreme Court certainly doesn't say it. And even Mr. Justice Douglas, who has been very sensitive to this area, and this is not said without any criticism -- even he has pointed out in the Senate opinions that this certainly is not a right upon which one can stand.

And again, they say in their complaint, that this argument that they are attacking presumes a majority of black voters in any Senatorial district in Harris County, Texas, at this time. But

1 **Arguments - Jurorshi**

2 they are not entitled to a district to
3 harmonize it with what life on Southern areas
4 that effect.

5 When Curtis Graves took the
6 new body would be necessary could not have
7 witness stand he admitted that he had
8 eight more witnesses not witnesses of what
9 drawn a district of his own; the district
10 of voters slightly -- available knowing as
11 that he believed was right and in his
12 recent past with -- available under local
13 testimony said that eighty percent or
14 more blacked -- even central and all South
15 throughout -- or maybe he even used the
16 words of -- available under collected all this
17 expression "over eighty percent of the
18 white and he wanted to know whether black
19 voters are black." Now this is not what
20 Justice Blackmun said in his decision because
21 the complainants here are entitled to --
22 consider representation and political rights
23 clearly not. The whites are not entitled
24 to political equal, to all the citizens have
25 to it and the blacks are not entitled to
26 and the blacks are not entitled to it and the
27 blacks are not entitled to it and the blacks are not
28 entitled to it. There is no constitutional
29 provision that affects them that right, and
30 it is not a violation of the constitution

31 for the districts, per se, to be separate,
32 to fulfill the duty, to represent
33 that the blacks happen not to have a
34 majority of the voters in a district.

35 Now, with the Court's indulgence
36 let me take the Davis case for a reviewing
37 of just a few of the principals and I am not
38 going to go back to discuss the facts of the

Arguments - Jaramila

1047

case because we all know that it originated in Marion County and Indianapolis; we know about the black ghetto; we know what was done in changing the districts from single to plural districts -- single member to plural member districts. The Court knows first that in the *Lewis* case, decided along with the *Reynolds* versus *Sims* case, we noted certain undesirable features of the multi-member district, but it purposely withheld any intimation that apportionment schemes which provide for the at large election of a number of legislators from a county or any political subdivision or constitutional defective, and there we again have this word that runs throughout this opinion and that is so very important.

Subsequently, when the validity of the multi-member district, as such, as was squarely presented, we held that such a district is not per se illegal under the Equal Protection Clause.

Then the Court went on to say that the voters in multi-member districts vote fair and are

Arguments - Jauraki

represented by more legislators than voters in single member districts, has so far not demonstrated an obvious discrimination against the latter.

Now, the invidious discrimination that has been charged here, and this very term has been used by the complainants and some of the intervenors, the Supreme Court has said simply because you have multi-member districts as distinguished from single member, does not, of itself, indicate the invidious discrimination. You need more.

Arguments - January

1949

The Court said, "That we have a system that will challenge and carry the burden of proving that multi-member districts, again, unconstitutionally operate to dilute or cancel the voting strength of racial or political elements; we have not yet sustained such an attack. The Court, pointing out that until June, and we have of no decision since that time by the Supreme Court of the United States, we have not yet sustained such an attack.

Now, to pass from that to one or two of the other pronouncements that I think we ought to keep particularly in mind. We are not ready to agree that multiple member districts, wherever they exist, over-represent their voters as compared with voters and members in single member districts -- even if the multi-member delegation tends to block voting. This is one of the things we heard about here, which is the basis of some of the complaints. The theory that plural representation itself unduly enhances a district's power, and the influence of its voters remains to be demonstrated and practiced in the day to day operation of the legislature.

And, then, if I say 1050

allude to only one or two other brief excerpts. The Court goes to a close examination of the record and then to pointing out what it does not find, and this is precisely what we do not find in this case. The Court says -- and I think this is the crux of its holding -- we have discovered nothing in the record or the Court's findings indicating that poor Negroes were not allowed to register or vote, to choose a political party they desire to support, to participate in its affairs or to be equally represented on those occasions when legislative candidates were chosen. And, then, finally, on the record before us, Plaintiff's position comes to this; let's see how similar it is. That although they have equal opportunity to participate in and influence the selection of candidates and legislators, and although the ghetto votes predominantly Democratic and the party slogan candidate is satisfactory to the ghetto, in vigorous discrimination, intimidation, results when the ghetto, along with all other Democrats, suffers the disaster of losing too many elections. And, we have had an abundance of testimony here about

Arguments - January

1051

elections that have been lost. But, typical American legislative elections are district oriented, head-on races between candidates of two or more parties. As our system has it, the Court says, one candidate wins and the other loses, and roughly, the losing candidate supporters are without representation since the men they voted for have been defeated. Arguably, they have been denied equal protection of the law, since they have no legislative voice of their own. This is true of both single member and multi-member districts, but the Court says "to have not yet deemed it a denial of people's protection to deny legislative seats to losing candidates, even in these so-called safe districts where the same party wins year after year."

Why I, for a moment, take up with the Court the case that was recently decided, a few days ago. And I, like your Honor, Judge Wood, and the newspapers, too, and I read where one of the council, who also has been one of the witnesses, testified -- or rather, was quoted in the newspapers as having said that such evidence is placed upon this case of nine votes

Arguments - January 1952

1052

I told "Flannery, decided by a three-judge Court in Alabama on -- well, just a few days ago." Now, here is what happened in that case very briefly. The complainant stated there was malapportionment in the State of Alabama and the Defendants came in and admitted that there was malapportionment.

What actually happened is that there had been a period of six years during which time nothing was done, and the Court being impatient -- and properly so, -- and when the Court called on the State to come in and produce its plans, they not only admitted that malapportionment did exist, but their plan showed the grossest of deviations -- absolutely shocking deviations -- absolutely shocking deviations -- all four of the plans. In addition to that, the State came in and said, "Though we admit malapportionment in -- " not only the State, but all the Defendants -- "let's let these persons who are serving now finish out their full terms" another stalling, and the Court said, "No, we have waited long enough, your plans on the face of it have such terrific deviations and are wholly unacceptable, that we must go forward

Arguments - January

1053

and we must set up a plan of our own." And I want to point this out, that some of the cases make reference to single-member plans being somewhat preferential over multi-member plans, but in each of these instances, reference is made to Court appointed plans. In other words, though there is no stigma attached -- at the United States Supreme Court -- said to multi-member plans, in instances where the Court does the appointing, the Courts have in some cases, referred to the fact that preference given to single member plans, and this is what the Court did in this case. And, finding this: first, that the provision could not be achieved in Alabama that should be achieved without the Court doing what it did have in single member plans. And, then, it made reference to the long history of racial discrimination evident in Alabama and, of course, they drew the conclusion from a number of facts -- the long delays plus the wholly unacceptable plans that were submitted -- which show tremendous deviations which the Court concluded were

Arguments - Summary

1052

designed and were done for the purpose of discriminating against the Black population. Now, the Court will recall these was some effort made here to suggest to a witness that maybe the situation in Alabama was not very much unlike the situation in Texas as far as the discrimination was concerned, and the witness had to admit that he did make a study, but he did first undertake to agree with that. And, the very fact that counsel injected it indicates that there was an effort made to try to link that case to this one.

Now, this Court judicially knows the difference in the situation, and this record here fairly teems with any number of instances showing the great strides of progress that have been made in this State over a period of time for the elimination of discrimination.

Argument - Jurenski

1055

1 And that the state is today one where our state
2 can say it proudly has made great advances.
3 And, to suggest to this Court for a moment that
4 there is any comparison in what has transpired
5 in Texas with what has transpired in Texas with
6 what has transpired in Alabama, under the
7 leadership that Alabama has had, is difficult
8 to understand. Now, while we are speaking on
9 the subject of deviation-- and I will hurry on--
10 the United States Supreme Court, it is probably
11 well-known by this Court, and we cite the case,
12 the Mann Case, held that a deviation that
13 approached twelve per cent-- eleven point nine--
14 was not an objectionable deviation.
15

16 The record in this case shows-- the
17 pretrial order actually indicates it-- that
18 the greatest that occurred at any time was
19 over 5.8 at any one place, and under a 4.1,
20 making a total of 9.9. This was explained in
21 the few instances where there was a deviation;
22 it was explained as having been done-- and the
23 depositions fully show this-- because of not
24 wanting to cross county lines and wanting to
25 do the best job that could possibly be done

1056

Argument - Jaworski

consistent with staying within county lines.

Now, perhaps a very brief comment should be made on one or two of the cases they have cited, inasmuch as I don't intend to make further argument to the Court except to get these matters before the Court that we believe govern and are controlling in this case.

The Guillian versus Lightfoot case, which was decided in 1966. Now, this is the type of pronouncement, the type of holding, that it is suggested as applicable to this case. And, what occurred there was that the Alabama Legislature decided to change the boundaries of the city of Mobile, and what was done is they left out all of the black voters and residents of-- over four hundred that had lived within the city, except four or five-- just put them outside the city limits. Well, of course, what happened in that case was that the lower court dismissed the complaint, the United States Supreme Court, of course, reinstated it. This is a star illustration-- a striking illustration-- of a situation that is the reverse, really, of what the complainant

Argument - JOURNAL

1057

Graves wanted, and that was to exclude all of the whites from his district except some eighty per cent.

In *Connor Versus Johnson*, which has also been cited here, the Court merely discussed what I have mentioned a few minutes ago with respect to court apportionment plan, and the fact that there is at times preference-- a preference given to single-member districts where the court fashions the apportionment. Now, may I suggest this, that in the final analysis-- and some of the questions that members of the Court asked brought this out, I think, very brightly-- what does it depend on? When we are unhappy about losing a race, when we are talking about someone who has won a race, when we are talking about numbers of races or numbers of ethnic groups, what is there?

That brings to the forefront the difference between failure and success. Oh, there are so many-- so many factors and so many elements that enter into these campaigns, as this testimony showed, and as the Court members themselves by the questions brought out that are

1 Argument - Jaworski

2 far removed from any question of races.

1 **ANSWER - Jaworski**

1059

2 Take the case of Senator Jordan from
3 Harris County, Barbara Jordan, one of the most
4 highly respected of all legislators in the
5 State of Texas, a black woman who has been given
6 high accolades by the white race, as well as
7 the black race.

8 Why? Intelligence, application and
9 industry and energy and a tremendous amount of
10 dedication and devotion to duty, regardless of
11 race.

12 Her testimony is in this record. She
13 says in Harris County there are five that under
14 this new plan are safe -- blacks -- possibly,
15 probably even one or two more. Under the redistricting she says she believes she could be
16 elected in her senatorial district.

17
18 Why? Because it is Barbara Jordan with
19 her abilities.

20 Joshua Robinson elected in Houston
21 over an incumbent white man and another one
22 elected by a majority of the people in Houston.
23 Joshua Robinson, a black man.

24 Why? The ability, the energy, projecting
25 themselves as a citizen worthy of the right

1 JAWORSKI - Jaworski

1060

2 to hold public office despite the fact he is
3 blank.

4 I think I have taken my time, may it
5 please the Court, and I appreciate it very
6 much. Perhaps I have even gone over my time
7 a little.

8 JUDGE GOLDEN: May I ask you two
9 questions, Mr. Jaworski?

10 MR. JAWORSKI: Yes, sir.

11 JUDGE GOLDEN: First, do you think
12 that the act of the Redistricting Board is more
13 analogous to a legislative act than a judicial
14 act?

15 And the second question is, do you
16 believe that there is any constitutional invidi-
17 ousness in dealing with Harris County one way
18 and Dallas County another?

19 MR. JAWORSKI: No, I don't think so,
20 and this is why -- I will answer the last one
21 first.

22 First, I think that I would agree with
23 Your Honor that it is a legislative act. This
24 is the group that was created by the Constitution
25 acting pursuant to that. One might say that some

1 **ARGUMENT - Javorski**

1961

2 of the functions that they perform may be
3 quasi judicial, but by and large what they are
4 performing is an act of judgment, it is true,
5 pursuant to a legislative and a constitutional
6 command. The reason I say that, although I
7 have no decision to support it, really -- it is
8 purely my own personal opinion. I think it
9 could be argued either way.

10 Now, as to the second one, say it
11 please Your Honor, I don't think that the ques-
12 tion of inconsistency as such is one that con-
13 trols. It is just as I said at the beginning.
14 Actions may be inconsistent. There may be
15 other reasons for it. There may be no particular
16 reasons for it, because you have got to go
17 further than that.

18 The mere point of inconsistency gets
19 you nowhere unless you can show -- I'm talking
20 about where it looks like something has been
21 done in one district on a single member basis
22 and in another district a multimember basis. You
23 certainly are going to have to show that the
24 Constitution has been violated in some respect
25 before there is anything that is invalid about

1 **AMMENDT - Jaworski ; McDaniel**

1062

2 that.

3 These are my answers, may it please
4 the Court.

5 **JUDGE GOLDENAS:** Thank you.

6 **MR. McDANIEL:** May it please the Court,
7 my remarks will be brief.

8 The first question that I would
9 address myself to is the situation concerning
10 Senate District 19 -- 21 -- excuse me.

11 **JUDGE JUSTICE:** Are you arguing on the
12 Motion to Dismiss?

13 **MR. McDANIEL:** Sir?

14 **JUDGE JUSTICE:** Are you arguing on the
15 Motion to Dismiss?

16 **MR. McDANIEL:** Yes.

17
18 **(RESPONDER'S NOTE: Counsel**
19 **displays map.)**

20
21 **MR. McDANIEL:** In San Antonio -- they
22 can see this fine, I think, from here, Tom.

23 This is not a question of a pretty
24 district or perhaps a district as we might desire
25 it to be. It is a question which comes from

1 **ABSTRACT - McDaniel**

1063

2 having a situation in San Antonio where there
3 are 110,000 more people than are required for
4 the two full senatorial districts that Bexar
5 County is entitled to. There have been state-
6 ments made that this is a gerrymander, but the
7 testimony is clear, both from Mr. Archer and
8 from Mr. Silber this morning, and they are the
9 only two that I recollect right now who have
10 testified on this particular thing, that no
11 matter where you take that 110,000 people out
12 of Bexar County, they have no community of
13 interests with the people in the lower end of
14 District 21. A choice had to be made, and it
15 was made.

16 It seems to me there is very little
17 to choose from between a U-shaped district,
18 which would have resulted from taking the popu-
19 lation out of the lower part of San Antonio
20 in Bexar County, and a cone-type district
21 surrounded by District 21.

22 In either event, you have no community
23 of interests.

24 The problem there is not desirability
25 so much as it is alternate, it seems to me.

Statement - McDaniel

1964

There is no satisfactory alternate. I feel quite certain that had this conservative Republican element of the population of Bexar County been put into Senator Bernal's district, Mr. Mar would be here in this same lawsuit, arguing there had been gerrymandering to defeat a Mexican-American.

The second thing I want to briefly discuss with you is how the population deviations in the House Apportionment Plan were achieved.

As the Court is probably aware, the Supreme Court of Texas this past summer struck down a House Apportionment enacted by the Legislature. One of the bases, if not the main basis, upon which that bill was struck down, was that Grayson County had been divided and that other counties had been divided in violation of the State Constitution.

In Texas the State Constitution provides that all senatorial districts shall be single number and has no provision whatsoever relating to the severance of county lines. It provides House districts shall not violate

1 **EXHIBIT - 1065**

1065

2 county lines and has no prohibition against
3 using multi-member districts.

4 of course, it does provide that where
5 an urban county is entitled to one or more
6 representatives, then the surplus may be carried
7 into an adjacent district.

8 This put the state in a quandary,
9 because we have the Supreme Court of Texas on
10 the one hand saying, "If you violate a county
11 line, you must be able to demonstrate that it
12 was necessarily required by Federal law," and
13 we have the Federal law on the other hand say-
14 ing, "You must get as close as possible to
15 mathematical precision. However, we recognize
16 that legitimate state policies and rational
17 state policies do provide some leeway, as long
18 as it is not too great."

19 Of course, the problem is what do
20 they mean by too great. We tried to take a
21 reasonable course. We tried to draw a plan which
22 minimized the cutting of county lines and yet
23 achieved a minimal population deviation.

24 One county line, other than a situa-
25 tion where you have an excess carried out of

ARGUMENT - McDaniel

1066

the county, occurred in the plan enacted. I will show the Court where it is. This is attached to one of the Spectral Orders and will be before you.

That occurs in the extreme northeast part of the state. It occurs there because Bowie County has 68,000 and some-odd people. The optimum number for a representative district is a little over 74,000, as I recall. I do recall clearly that one percent is equal to 763 people for House Apportionment.

Bowie County is adjacent to three other counties. Two of them have 14,000 some-odd population, and one of them, Morris County, which extends diagonally into the state, has 12,000 and something. It could have been joined with Morris County, but if it had been joined with Morris County, the population deviation would have been about a percent up. It was decided to split Red River County which creates two districts up here (indicating) of almost optimum size and does not result in a wedge driving in from the corner of the state, which severely restricts what you can do in the rest

1 **ANSWER - McDaniel**

1067

2 of East Tennessee. Severe problems in drawing
3 these districts without violating county lines
4 are presented by East Tennessee, because the counties
5 in East Tennessee vary in population from around
6 12 or 13,000 up as high as 25,000, and you have
7 to choose your building blocks very carefully
8 over there.

9 The third thing that I wish very
10 briefly to comment on -- I don't think I need
11 to elaborate on it--.

12 **JUDITH GILBERT:** Is that the only
13 deviation that they allege?

14 **MR. DANIEL:** The deviation goes
15 from a high of 5.5. That is the highest, and
16 it occurs in District 3, I believe is the
17 number. It is the district which includes
18 Harrison and Rusk Counties. One of these
19 counties has 60-something thousand people,
20 and the other has 30-something thousand people.
21 And there are only two ways you can draw a
22 district including Harrison County.

23 The lowest under is 4.1 percent,
24 and it also is in East Tennessee, and I don't
25 remember which district, but it is very close

ARGUMENT - McDaniel

1068

to this one (indicating). The others vary
in between there.

A number of them are pretty close to
the optimum, really.

The other thing I wish to comment
on very briefly is this constitutional question
that Mr. Jaworski has discussed rather thoroughly,
I think, as it regards Bexar County. It is very
difficult for me to see and, indeed, I think
the Mexican-American Interveners have totally
failed to discharge their burden of proof in
this case. It is very difficult for me to see
how you can say that a multimember district is
unconstitutional in Bexar County when the group
of people they are representing as a class and
for whom they have intervened do not constitute
a minority in the county and when they have
already demonstrated in the past the ability
to elect representatives to the State House.

Now, it is true there are problems
of poverty. It is true that they could probably
elect more Latin-Americans consistently to the
House from certain districts with single member
representation, but, as I understand it, that

1 **REMARKS - Material**

2 **1069**

3 **is not the constitutional issue.**

4 **The question is, do they have effective**
 5 **and adequate representation, and I believe the**
 6 **testimony that we have presented and the evidence**
 7 **generally shows that they do.**

8 **Thank you, Your Honor.**

9 **MR. WILLIAMS: Is Mr. Luna going to**
 10 **argue?**

11 **MR. LUNA: No.**

12 **JUDGE GILBERT: You are not?**

13 **MR. LUNA: No.**

14 **MR. WILLIAMS: May it please the Court,**
 15 **I am Stuart Wallin from Harris County in the**
 16 **Harris County Curtis Graves case.**

17 **I think that there are a couple of**
 18 **things that I ought to say at the outset to set**
 19 **the stage for this particular case. This is**
 20 **not a Whitcomb versus Charvis case in my opinion,**
 21 **and for that reason, as Mr. Jurewicz indicated,**
 22 **Whitcomb versus Charvis was not cited in the**
 23 **Federal Memorandum.**

24 **As that case specifically itself said,**
 25 **the Plaintiffs in that case or the Appellants to**
 26 **the Supreme Court had stipulated that there was no**

ARGUMENT - Holkin

1070

1 racial motivation in the way lines had been
2 drawn or in determining that multimember dis-
3 tricts would be used, rather than single member
4 districts.
5

6 In our case we have specifically
7 alleged that there is and was a racial motiva-
8 tion in the way Harris County senate district
9 lines were drawn, and for that reason we think
10 that Whitcomb versus Chavis is not the appli-
11 cable standard, but rather Sims versus Baggett
12 and the cases that follow in the line of Sims,
13 most of which have been written by the Middle
14 District of Alabama, either by one or three
15 judges, as well as the similar case of Conillion
16 versus Lightfoot -- should be the cases that are
17 followed.

18 Now, with respect to racial motivation,
19 I think that the Plaintiffs in this case have
20 discharged their burden of showing motivation
21 or intent by both direct proof and by inferences
22 which are simply compelling under the circum-
23 stances in our case.

24 With respect to motivation, I don't
25 know if the Court has had the opportunity of seeing

1 AMERICAN - Dallas

1071

2 depositions that were filed with the Court
3 yesterday, but they included the depositions
4 of Sammy Brownell and Everett Collier. Now,
5 I appreciate the fact that the Court was a
6 little -- well, the Court was anxious for us
7 to move quite quickly at the outset, and some
8 of the information we were giving with respect
9 to Everett Collier and/or Sammy Brownell
10 seemed at the time irrelevant, but I believe
11 if the Court will study the depositions of
12 these two gentlemen, we will see that, in fact,
13 lines in Harris County were certainly racially
14 motivated. The lines were drawn in that fashion,
15 and I would like to point to a couple of
16 instances in the deposition, which we feel
17 contains the burden of direct proof of racial
18 motivation.

19 with respect to Sammy Brownell,
20 the Sub Spillings' deposition will indicate,
21 drew the Houston Chapter of Citizens plan.
22 It is called the Houston Chapter of Citizens --
23 Sammy Brownell plan. Dr. Brownell himself
24 testified that in drawing the Sammy Brownell
25 plan he was interested in limiting liberal voting

ARGUMENT - Walker

1074

blacks in Harris County.

Now, of course, he didn't use the word "Negro," but this Court would have to be blind to the fact that in Harris County liberal voting blocks and blacks are the same thing.

Mr. Branswell indicated and Professor Murray indicated both that the analysis was made from Benson, Yachtorough, Democratic Primary election returns.

Mr. Branswell acknowledged that with respect to Democratic Primaries, black people in Harris County, black precincts voted overwhelmingly for the liberal Democratic candidate, and we feel that that is what is important in this case, because Mr. Branswell, who drew the lines and who Professor Murray said the probability was were that the lines in the Searcy Branswell map were not listed and placed into the -- at least in great part with respect to the case, the plan that became law -- Mr. Branswell acknowledges his primary purpose was to get conservatives elected, and the way to do that was to hunt up liberal voting majorities, liberal voting blocks and place those in with

Amendment - Melvin

1073

white conservative majorities or with conservative majorities.

Now, the only thing that is not there, Your Honor, is the term "Negro" or whatever the term might be. The fact of the matter is that 25 to 30 percent of black people vote overwhelmingly liberal Democrat, and that was the purpose of Mr. Branswell.

Now, Mr. Branswell was asked whether or not he discussed (1) his plan with Everett Collier, and he said yes, he had discussed his plan. He was asked whether or not he and Mr. Collier had ever discussed race, and he said, "No, we were concerned more with politics than with race." This is a characterization. It is in the deposition.

Yet, Mr. Collier was asked in his deposition at Page 23, "Have you ever talked to Henry Branswell about the racial make-up of the area of the city and the area of the city votes?"

"No, I have discussed that with him in relation to this very map."

Now, that particular map that they are

ARGUMENT - Walkin

1074

1 talking about is the map that Mr. Collier testi-
2 fied was brought to him by Seaway Branswell
3 that they had discussed together. That is the
4 map that now dictates and is, in fact, for the
5 most part the core districts of Harris County,
6 Texas.

7
8 Now, it is one thing to say that this
9 is a political gerrymander and that we don't
10 have a right to say Republicans or Democrats or
11 whatever have a right to be elected to office,
12 but it is another thing to say, "We are going
13 to best liberal voting blocks," when that term
14 and blocks are synonymous in Harris County.

15 Interestingly enough, there is a sub-
16 stantial number of white liberal voters in
17 Harris County in the Pasadena area, which
18 Professor Murray testified to. Yet, if you look
19 at the plan, you will see that they were not
20 divided. It was only in the core area, and
21 the core area, as Professor Murray testified
22 to, was for the most part substantially black
23 and liberal Democratically voted.

24 Now, I think that that is direct
25 proof, and, of course, when you couple that with

1 **ANSWER - Dallas**

1075

2 the fact that Representative Farnsworth stated
3 that Lt. Governor Barnes, as far as the Houston's
4 information, had a comment to the Houston
5 Chronicle, the Editor of whom is Everett Collier,
6 I think that it is just impossible not to draw
7 that conclusion that race had a factor or was
8 the motivating factor in the way Harris County
9 lines were drawn.

10 (The omission here.)

11
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25

Argument - Holkin

1076

Now, with respect to the inferences that I mentioned, I think that if we look at the cases of Sims versus Suggatt -- if we look to the other cases that are also along that line, such as Smith versus Barrett, 257 Fed. 2nd 7921, as well as Sellers versus Russell, we see Judge Johnson in almost every one of these cases, saying, "We have got a racial effect", and we have got a background in this State, in the south, of dilution of Black votes, either through poll tax, through literacy tests, through grandfather clauses -- you know -- all of which we have had in Texas and of course, you can take judicial notice of the cases, the Jaybird Primary and everything else in this State, deliberately designed to dilute Black voting strength.

Judge Johnson has said when you have a racial effect, which our experts testified to, which no one denied, Senator Jordan included, that given the background of Texas politics, the inferences compelling that these

August - Dallas

1077

was a racial violation in the way these lines were drawn.

And, of course, another thing you might look at with respect to the convenience on lines of having all of these areas together, Harris County is the only County that has single member districts.

In all of the other counties they are complaining about the fact that minority voting strength has been diluted because of multi-member districting. But Harris County has the unique situation of a Senate problem, and of course, as Professor Hays testified and as Mr. Russell testified, there was an intention there and a hope there that Messrs. Ogg and Lucas, conservative Democrats, would be elected. The way to do that was to hunt up liberal voting majority and that meant to hunt up the blacks.

JUSTICE: There is no testimony in this record that the single member districts in Houston were racially

Argument - Melkin

1078

motivated, is there -- Harris County
single member districts?

MR. MELKIN: No, sir.

JUDGE GILBERT: They are all right?

MR. MELKIN: It is not part of
our lawsuit. I will just leave that for some
other Plaintiffs. But I have not examined
these.

JUDGE GILBERT: Well, would it
be a fair or would it be an unfair instance
to say that that racial motivation is only
found on the Senate side, but not on the
House side?

MR. MELKIN: As far as our
particular lawsuit is concerned.

JUDGE GILBERT: It would be an
unfair inference?

MR. MELKIN: I don't know if it
is an unfair inference.

JUDGE GILBERT: Unjustifiable
inference?

MR. MELKIN: I don't know the
facts in the House.

JUDGE GILBERT: No. Let me state it

BYER

Argument - Rehearsal - January 1979

1979

again.

MR. WILSON: Yes, sir.

JAMES GILBERT: So we can understand each other. There is no proof -- no allegation to prove the single member districts in Harris County have any constitutional infirmities to them.

MR. WILSON: No, sir.

JAMES GILBERT: Would it be an unfair, unreasonable, unjustifiable inference that if all of these bad things are to be found in the Senate side, we wouldn't find them on the House side?

MR. WILSON: Yes. That is an unfair inference.

JAMES GILBERT: All right.

MR. WILSON: Now, with respect to the question of effect, I think that the testimony is uncontroverted, both from the witness stand and from depositions, that whatever the intent of the people or whatever the motivation of the people who drew these lines, or had a part in drawing these lines, nevertheless, the

Argument - Holkin

1980

effect was to dilute the Black voting strength. And interestingly enough -- it is not interestingly enough; it is a matter of fact, we have not stated we are entitled or guaranteed or that we have the right to be guaranteed a Black seat; we have simply said, "You can't take a step backward." This State has worked too hard, or the Federal Courts have worked too hard to guarantee Black people some semblance of representing themselves, and when they finally get their first Black Senator from Harris County, the first chance to redistrict, that Black Senate seat is gone. And she has so testified, herself, that she thought she could broaden her base, that she also said the fact that a white incumbent was in that area, would make it extremely difficult for her or anyone else to be elected, and particularly inasmuch as she has announced for Congress, particularly for someone who is not

Argument - Melvin

an incumbent Senator, such as himself, who is a black, for her to be elected it would be virtually impossible.

Now, that particular district I am speaking of is the district that has the liberal -- the white liberal vote in it. Nevertheless, it does have a white incumbent Senator.

The other point I might make is I think that there has also been a substantial end-run in the requirement that Sims versus Haggatt set out.

Sims versus Haggatt had a showing -- an inference that Judge Johnson felt was compelling with respect to a finding of motivation. And of course, Camille had always been used as an intent or a motivation case. Nevertheless, the Supreme Court has said in Fuller versus Thompson, which was decided a week after Whitcomb versus Davis, and involved the Johnson Arming Paul case that was closed, the Court stated that in fact, people had used

Argument - Malkin

1082

some of the reapportionment cases as requiring a motivation or an intent in the 14th and 15th Amendment situation. However, they specifically stated in that case that Gomillion was an effect case, rather than an intent case. And as far as we are concerned, we have no requirement of proving anything, as far as motivation, but we feel we have adequately substantiated both the burden of motivation and intent.

Dr. Harry was never seriously cross-examined, nor were any other of the witnesses seriously cross-examined, and the proof is uncontradicted that there is a racial effect in Harris County; that there is the likelihood of no Blacks ever being elected to the State Senate in Harris County til the next reapportionment.

Argument - Nelkin

So, you know, the Court really has a choice and they can either write off the Black people in Harris County for another ten years, or they can recognize the fact that if you don't use the term "Negro", and use some other term, such as "Black voting block" or "Liberal voting block", in this State, part and parcel they are one in the same.

We think that we are entitled to judgment; we think that the plan that Professor Murray presented did not-- I might indicate did not establish a majority Black district. We are not asking for that; we simply want a chance. We want Blacks to have a chance to elect representatives of their own, and that is all that they had before, that is all they are entitled to under the Constitution, and that is not what they have at this time.

JUDGE WOOD: Well let me ask you this one question, Counselor: You made the statement that the Board cannot dilute the Black voting strength. Well, I believe Whitcomb versus Davis says you can't dilute it unconstitutionally, doesn't it?

Argument - Melkin

MR. MELKIN: That's correct.

JUDGE WOOD: And what that means is, you cannot dilute it arbitrarily and unreasonably? Is that right?

MR. MELKIN: Well, that is, in part, right.

JUDGE WOOD: Well, Mr. Justice Brandeis in many of his decisions used to state repeatedly that if the action of the Board or of the government agency or of the legislature was not arbitrary and unreasonable, he would vote to sustain it. That was his test of constitutionality.

In this particular case do you feel like that you have shown—you have assumed your burden to establish in Houston that the dilution of the black voting strength had been arbitrarily and unreasonably exercised by the Redistricting Board in this case?

MR. MELKIN: Your Honor, two answers to that question.

JUDGE WOOD: All right.

MR. MELKIN: The first one, I think, is that when we call into play the question of unequal protection, the burden then moves to the

Argument - Holkin

1065

State to show a rational basis. That is the equal protection law, as I understand it.

Now in this particular case I would also say that we certainly have established the burden of irrational acts on the part of the legislature, or the Redistricting Board. Bob Spellings, who drew the map, as he stated, for Harris County and for the whole State Senate, testified he used certain concepts; the core concept, community of interest, compactness and contiguity and took into account race. He asked our professor, Professor Murray, who was not seriously challenged as an expert, whether those particular principles had been complied with in the law, as it presently exists and he stated that every single one of those principles had been done violence by the type of map that was drawn. There was no contiguity, the lines went all over. There was no compactness; we had a horseshoe all of the way around from the north-- I guess the northwest, all of the-- southwest, I beg your pardon, to the southeast part of Harris County, looping all of the way around the district, including people who had no more

Argument - Melkin

community of interest than the people who are established in the new 11th or the new 6th District.

And with respect to all the principles that Bob Spellings stated he had used, Professor Murray stated that none of those were complied with. Professor Murray distinguished expert in the area. Bob Spellings, as you see from his deposition, had approximately a couple of days experience in drawing maps before he drew this for the State Senate.

Another interesting point, I think, is a statement that Mr. Sam McDaniel made early in either the pretrial or the opening part of this trial, and he said, "It is the position of the State that we don't have to do anything. You know, we can stick our chin out and you try and hit it." We say that these are political decisions and, "We don't have to justify anything." And of course we disagree with that particular characterization. We think they have a burden of showing some rational basis and they can't do it. All they can argue is one man, one vote. And we further think Professor Murray adequately

Argument - Melkin

1087

discharged that burden.

JUDGE WOOD: Thank you.

MR. McDaniel: It is inappropriate, perhaps, to say that I would like to-- that I do not recall the conversation Counsel alluded to.

JUDGE JUSTICE: Which conversation?

MR. McDaniel: The one he alluded to at the end of his argument that I stated-- reportedly stated about all we had to do was stick our chin out and let them hit it.

MR. RICHARDS: May it please the Court: We began with the premise that an irrationality, very basic and essential irrationality arises in the treatment of Harris and Dallas Counties in the reapportionment plan.

The State, in response to interrogatories, through Mr. McDaniel here, and it is recorded, indicated that there were neither practical nor theoretical justifications for the different treatment between Harris and Dallas County, but rather, it was a political decision and we think that is a fair reading of the deposition.

Argument - Melkin

1086

We see much more involved than simply the exercise of a choice, that is, a choice between competing plans, multi-member or single-member for rather, we have here an abandonment by the State of an announced State policy, for in Kilgarlin versus Crawford Martin, the State represented to the Federal Court that the State policy was that any time a county exceeded one million voters, that became unworkable and that that county would be subdivided into legislative districts.

As reflected in the Court's opinion, the Federal Court was lead to believe that any time a county in the future attained one million voters, it would be divided. Now somewhere-- we are not sure-- but that policy got lost in the reapportionment scheme and strangely enough, the players are essentially the same; the Defendant was Crawford Martin, the Speaker of the House was Lt. Governor Barnes and the sponsor of this testimony was the present Speaker, Mr. Matscher.

JUDGE GILLESPIE: While we are on that subject, what is your position with respect to

Argument - Malkin

the other counties: Travis, Lubbock-- what are some of the others? There are...

MR. RICHARDS: Well, there are worlds of them; Muecas, El Paso and others.

JUDGE GOLDMAN: Since you are on the subject.

MR. RICHARDS: Well, I guess we have two positions; one position is, we think single-member districts are preferable everywhere.

We think the case is so compelling in Dallas

that we have no only-- because here we have an abandonment, as I say, of a policy that the State said was going to govern in the future and I think we have noted at least a fair showing of proof that the Blacks have historically, and still presently are being excluded from the process in Dallas.

...

...

...

Argument - Richards

1090

We have challenged, and do challenge all multi-member district schemes throughout the State and urge that single member districts prevail throughout.

We feel we have concentrated our proof on Dallas County and we do suggest, at least, there is this rather fundamental distinction that the State, at least, fought a policy five years ago that would have required dismembering Dallas County, that they have jettisoned now without explanation. So that we think that at least puts the doubt in some what -- the same situation arose in Kilgartin -- the Federal Court, itself, you know. What explains the getting of Harris and deleting of Dallas alone and they said, "A policy that one million citizens is unworkable", so the Court said, "Well, this is rational. This is a rational line to draw." Now we suggest, however, that if that was a rational line to draw in 1948, it becomes exceedingly irrational to abandon it without explanation, and that is exactly what has happened here.

Argument - Richards

1081

The effect of the at large system in Dallas County is, it seems to us, rather clear. It is clearly unconstitutional in two respects. We think we have demonstrated -- as we have, as a practical matter, the black citizens of Dallas has been frozen out of meaningful participation in the nomination process. We will have in a very short pretrial brief that we think will be a meaningful distinction between Whitcomb and we would like to do it in a subsequent submission.

We also have another problem that arises out of Dallas County at large; a problem we consider to be of deviation and unlike the suggestion of Mr. Jurewicz, we did not stipulate the State's figures on deviation were accurate at all, but contrary, we think the act of deviation effect on Dallas County is that Dallas County is over-represented by some twenty-one percent, whereas Tarrant County is under-represented by approximately eight and a half percent. We say this in good reason. I see the population -- the distribution on the Court's face. The State, for purposes of analysis

Argument - Richards

1082

of deviation have treated Dallas and Harris as if they were single member district counties, and what they have done in Dallas is they have analyzed Dallas just like Harris; they took the shortage of population and they sprinkled it out through eighteen legislative districts, as if Dallas was dismembered into eighteen legislative districts, and said, "You see the deviation here is just eight-tenths of one percent", as if Dallas was in the single member districts, and that would be the deviation if Dallas were in a single member district.

But the district, the meaningful district the State argues for is the county — the at large county as a district, and that district is under-populated by almost seventeen thousand, a deviation then of something in excess of twenty-two percent, in view of the fact that the optimum district is seventy-five thousand. The deviation that flows from —

JAMES GOLDSBERRY: -- If you had single member districts, it would not apply?

MR. RICHARDS: That is exactly right.

The deviation would be what the State now says

1 **Reynolds - Richards**

1083

2 it is; less than one percent.

3 To suggest that the State cannot
4 have it both ways. They cannot -- they.

5 As far as blacks are concerned in
6 Dallas County we have never supported and we
7 do not want to be thought to suggest that
8 blacks are entitled to have black legislators
9 or black Senators, but only that they are
10 entitled to equally participate in the process.

11 I thought Congressman Allen stated it very well
12 that they be heard meaningfully, whether it is
13 a designation of blacks or whites to represent
14 them in the process when it is at a stage when
15 it is meaningful. And I think that is our
16 contention.

17 We think that the historical differ-
18 ences in Dallas County and Maricopa County are
19 dramatic. We look to 1957 -- admittedly to
20 fourteen years ago -- but it at least gives us
21 some flavor of the time when the Dallas County
22 legislative delegation was elected at large,
23 right at the moment of passing segregation
24 statutes; one of the delegates from Dallas
25 County at that point was passing a bill through

Argument - Richards

1094

the legislature, that would have, in effect,
 driven the NAACP out of the State of Texas.
 Now that was the political climate in Dallas
 in 1957 and '8 and the candidates were run
 against in Dallas County on the grounds that
 they NAACP support and the record here will
 show a full page ad saying, "Don't vote for
 him, he is for the NAACP."

Now the question we think we have in
 dealing in this area of fair representation is,
 it has that hostility that was so manifested in
 1958, was so dissipated that the Court can assume
 that the dominant white majority is no longer
 hostile to black interest and hence, fair
 representation flows.

Argument - Richards

1095

We think one, historically, these things
 don't disappear that quickly. Now, we
 hope that some of the evidence we have
 put in the record, and it is in the
 deposition, reflecting a continued
 reliance upon racial campaign tactics,
 speaks several ways, we think. It
 speaks to an assumption on the part of
 those who know Dallas politics best,
 that when the time comes, the electorate
 will still respond to a racial appeal.
 They use the elections and they are
 relying on racial appeal, then, they
 must be the best judges of where
 prejudice still prevails and the
 dominant white majority in Dallas
 County. We raise the second question
 about the legislator who is elected,
 in part, upon a basis of racial appeal,
 suggest to no quite different notions
 that he could indeed be responsive to
 the total community, including the black
 community, when conflict arose between
 the fundamental interests between the two.

Argument - Richards

1096

For that reason and for reasons, we hope, that are of record, there are meaningful distinctions between Indians and Negroes. While Indians was enacting anti-discrimination legislation in the 1930's and I think, when the Supreme Court said there is no showing of a recurring poor performance on the part of the legislative delegation as far as the interests of the Negroes in Marion County, they were looking in part to "this is what we have got. We have got a stay that the Legislature is passing fair housing laws, passing fair employment laws" at the same time -- in 1936 they were on the books in Indiana. And, in 1957 we are still passing segregation statutes in Texas, so, there are -- At least through the 50's there was recurring poor performance on the part of the Dallas County delegation as regards the poor Negroes of Dallas County. This comes to me is where we began the analysis

Argument - Richards

1087

1 of Davis is not present case.
 2
 3 Davis, to me, is definitely essentially
 4 in the conception of our two party
 5 system; you win and lose elections in
 6 November. And, that is really all the
 7 game could happen here; the Democrats
 8 lost in November. The Democrats were
 9 giving confidence completely to the
 10 ghetto, the Democrats were taking into
 11 account the needs and interests of the
 12 ghetto in the ghetto and if the Democrats
 13 had won in November, the ghetto would
 14 have been represented, but we do not
 15 think that is our case. We are dealing
 16 as a one party state in which the
 17 decisions that are made with regard
 18 to the legislative delegation are made
 19 not in an open primary, but, as a
 20 practical matter, made because of
 21 the threat of race, money and
 22 domination by a small group who
 23 dominate the Dallas County elective
 24 process. We do want the right, if
 25 the Court will please us, to file a

Argument - Richards

1098

memorandum brief. Our original brief was necessarily short, because of other pressures of time. And, that concludes the presentation on behalf of the Dallas Blacks. Do you have any questions, Your Honor?

JUDGE GOLDBERG: No. We will discuss the briefs after everything is finished. You may continue, Mr. Edr.

MR. EDWARDS: May it please the Court, on behalf of the Normal Interveners, the Mexican-American class in this case, I

would like to address myself to two or

three of the points that Mr. Jansky

commented upon before I proceed with

the presentation of my own aspect of the

case. He alluded to the fact that in some

of the pleadings or memoranda that we

had failed to address ourselves to the case

law in question. Now, I have filed -- or

we have filed with the Court a trial brief

-- and our pleadings also reflect -- that

the fact that we have addressed ourselves

to what I consider some of the key language

Argument - Richards

is the Court's case that governs our situation. At one point the Court in *Crawford* stated, "That we have denied the validity of multi-member districts is incontestable", that is, they can be questioned. Envisioning, also, that they may be subject to challenge for the circumstances of a particular case may operate to diminish or cancel out the voting strength of racial or political elements of the voting population. And, this is the key language at this point. "Each a territory, we have said, is enhanced when the district is large", as we have here, Dallas, Houston, Denver and a number of them are large and elections substantially -- "and elections substantially in proportion of the vote in either House", that also fits our case. That fits our language right down to the last dotted i of a bicameral legislation, if it is multi-membered for both Houses of the Legislature -- that, we don't come up with. Our Senate is single and the other is

Argument - Richards

1100

multi-number in part and single number
in the other portion.

1 Argument - Blair

1101

2 Or if it limits the provision for
3 at large candidates running from particular
4 geographical subdistrict, as in the Fortson
5 case where -- which I believe, also, inci-
6 dentally is true here -- none of them were
7 multi-member districts except for Harris
8 County provide for any further subdivision
9 of the residence qualification of candidates
10 running from any particular area. The Court
11 later on addresses itself to the typical
12 American election as being district oriented
13 or head-on races between candidates of two
14 or more parties. I don't want to belabor
15 that point, Mr. Richards just touched on
16 that. There is some additional language
17 but I would like to proceed to something
18 else. With respect to the Alabama case,
19 *Sin versus Pharr*, which is the one that has
20 just been decided, there is very significant
21 language. The court, after speaking about
22 *Chevis* at one point here, states, "In these
23 cases" -- these are the ones that were before
24 the Alabama Court -- "as shown to Soller" --
25 they didn't follow *Chevis*, apparently -- "as

Argument - Idar

11-2

chance the -- I am sorry, I will read this
 portion and then get to what I am really
 concerned with. "The rule enacted in
 answer not on the ground that it utilized
 multi-member districts with inherently
 discrimination against blacks, but primarily
 on the ground that to do otherwise would
 sacrifice the mathematical precision which
 can be achieved in Alabama only by a single
 member plan." Now, this next sentence,
 "Secondarily" -- this is the other prime
 factor that the court considered -- "We do
 know that Whosem arose in Indiana, a State
 without the long history of racial discrimi-
 nation evident in Alabama, thus we feel
 justified in pointing out that in Alabama
 it is reasonable to conclude that multi-
 member districts tend to discriminate against
 the black population." Now, I can assure
 this Court that I, for one, don't take any
 particular personal pleasure in, you might
 say, washing our dirty linen out in public.
 I don't particularly enjoy pointing out the
 weaknesses, the prejudices of our institution

Argument - Elder

PAGE 1103

or individuals, except sometimes, as in this
 case, it becomes necessary to do so because
 they are part of the historical context that
 I believe this Court is facing, and that the
 Court in Alabama addressed itself too. With
 that language in the Alabama case in mind, the
 question arises to what extent have we made
 progress in terms of resolving our inner group
 relationships, in doing away with what we all
 knew were historical discriminations, both as
 to the black and the Mexican-American.

Argument - Idar

Have we not reached a plate in our society in Texas where this issue is no longer cognizable by the court? The mere fact that the black is no longer a slave or the mere fact that our Constitution and statutory provisions that placed him in the subservient position, as far as our schools, for example, are no longer the law, and other similar situations affecting the Mexican-Americans, have we not reached the point where a court must no longer consider discrimination as it relates to a particular group? That is one reason why we felt it necessary to point out to the court, and we hope to file a post-trial memorandum reciting the cases we are concerned with, because these are all recent cases within the last year or two where the Federal Courts have set aside official practices and official statutes that the State of Texas has pursued that have affected these groups that we are concerned with. Now, Your Honor, to get to our case, I think the evidence is clear out that that exhibit over there, that broad area there taking the Mexican-Americans on the

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Argument - Idar

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west side of San Antonio and the other area taking into the east side, that is a tremendously large portion, geographical portion, of the City of San Antonio, and it encompasses a very substantial — I guess it encompasses half or better of the population of this city. And, the record is clear cut that only five people, I believe it was, has run — or, rather only five Mexican-Americans have been elected to this Legislature from Bexar County in the period of time reflected by the evidence. Now, I would like to point out to the Court that at no time did we make an effort to show that a Mexican-American living outside of that area might not necessarily be a good representative of the people, nor for that matter would an Anglo not be a good representative on behalf of those people. Our point is, however, that those people within the area itself are the ones that require the representation, that they need somebody who is living in their midst who understands what their problems are, who can be their advocate before the Legislature. Perhaps if they had

1106

Argument - Idar

that type of representation in Bexar County and other groups in El Paso and Dallas and Fort Worth and elsewhere had like representation, some of these issues could be resolved in the Legislature and the Federal Courts might not have to face up to them time after time after time as has been happening in the recent history in this country. We felt it necessary for the purposes of showing the needs of the people in that area to introduce evidence relating to the educational, socio-economic health and other problems that are facing the people in that area. The question arises, are we going to polarize the community by drawing district lines in such a way that blacks or the Mexican-Americans are going to get three or four representatives? To what extent is that going to hinder their working as a team? Well, I think we would be very blind if we don't recognize that our country is facing a very serious situation, particularly in our metropolitan areas -- not just in Texas but nationally. That the people, the core

Argument - Idar

1107

cities, are becoming black or Mexican-American or Puerto Rican -- it depends on where you are -- that the white population is fleeing to the suburbs but they are still retaining control of the basic institutions that govern the life of the community. This is creating disappointments and frustration on the part of people living in the core cities, which could easily be resolved, I believe, if they were given a measure of representation. If they had a representative and they knew who he was and lived within a few blocks of where they live, one that would almost go home to home in his campaigning, he could practically do that in a single member district. And, while on this point I might as well point out, as far as we are concerned through the testimony that we presented to this Court, we have not advocated either in that manner or in our pleading that the districts be set up designed specifically to give the Mexican-American any particular amount of representation. We are simply taking the position that the plans

Argument - Idear

PAGE 1108

that have been adopted or diluted and
minimizing and quelling out his voting
strength. I would like to elude very
briefly to one or two other points that
I believe Mr. Richards, I believe,
touched upon. And, that is the question
of whether we had a rational State policy.
Very briefly, in 1963, under the policy that
Mr. Richards eluded to, Harris County was
given three districts that I will term
"many multi-member districts" since they
contained six or seven districts apiece,
and that was supposed to be the State
policy. Now, in 1971 Harris County gets
twenty-three, the other metropolitan areas,
Dallas, DCA particularly, continue to
get the multi-member district -- particu-
larly Dallas, who is now one million three
hundred thousand or better. Both, I
believe, Mr. Barnes and Mr. Spelling in
their depositions testified that they did
take into consideration, as far as the House
districts in Harris County, the question of
race. Why didn't they do likewise in Dallas

1 Argument - Year

1109

2 and Denver? Why is it that we wind up with
3 A crazy quilt House redistricting plan
4 State-wide that, to begin with, to every
5 citizens outside of Harris County -- and I
6 am talking about whites, blacks and hispanics
7 and everybody else -- is being denied the
8 same effective voice that a citizen in Harris
9 County that our senate is only a small
10 district with seventy-four thousand people
11 is going to receive. On the other hand, we
12 also have this other situation that I think
13 the Court is aware of, our present plan
14 results, in effect, in recognizing race as
15 a factor in Houston and seeking to, in fact,
16 recognize the constitutional requirement that
17 you must not dilute it or minimize it but
18 failing to do likewise in Dallas or Denver
19 where you also have sizeable minority groups
20 -- the blacks and the Mexican-Americans.

ARGUMENT - Idar

1110

... I believe that this plan has created
 a new situation. We now have, I suppose, some
 kind of triple-faced discriminatory pattern in
 To here. We are discriminating by giving the blacks
 in Harris County but denying the blacks in Dallas
 single member districts. We are minimizing their
 voting strength in Dallas, while recognizing it
 in Houston.

The same thing applies to your Mexican-
 American. I don't believe that I need to belabor
 the evidence that relates to the cost of cam-
 paigning. That should be fairly self-evident
 to anybody that is cognizant of our modern-day
 campaign costs.

I would like to comment very briefly
 on one point that Mr. McDaniel cites, the fact
 that the Mexican-American may now be on an equal
 basis population-wise with the Anglo-American
 in Bexar County.

It is a fact that they have equal politi-
 cal effectiveness and equal and effective voice
 in the selection of legislators from that town.

I believe that Dr. Cotrell, the expert
 that we brought before this Court -- now, Mr.

1 ANSWER - Yes

1111

2 ANSWER: Richards mentioned something about -- or some-
 3 body -- I guess it was Mr. Melvin -- that Dr.
 4 Murray was heavily challenged in his testimony.
 5 Not a single question was asked of
 6 either of Dr. DeWitt. He pointed very clearly, I thought,
 7 that this concept that simply because two
 8 groups are equally balanced population-wise,
 9 two groups in the context in which we have the
 10 Anglo versus the Mexican-American, that it is
 11 a factor that gives them an equal voice. We
 12 are ignoring all these other factors that have
 13 affected the Mexican-American, the drop-out
 14 rate, the educational achievement, the
 15 language factor, any number of other conditions
 16 that are reflected by the evidence that we
 17 have brought before this Court, and we
 18 say, "If they were on the same footing
 19 as the Anglo-American population, had the same
 20 median income or the same education generally,
 21 I would then say, 'Yes, balance them on the
 22 basis of so many heads over here (indicating),
 23 so many heads on the other (indicating), and
 24 we have a situation that we don't need to con-
 25 sider ourselves with.'"

ANNOUNCEMENT - Istar

1112

The last thing that I would like to touch upon, Your Honors, is the fact that the single member districting plan, I believe, fits closest to that concept of government that I believe we all believe in, that that government is best that is closest to the people.

Now, if we had an urban type society like we have in this country, if we didn't have these tremendous metropolitan areas, the cities, perhaps a two or three or four multimember district could be justifiable. In fact, the Court, I think, may be wondering about that, judging from one of the questions.

Yes, we do have some multimember districts with two or three representatives. Perhaps we may not have yet reached the point population-wise in those particular districts to think about giving them single member districts. I certainly don't want to advocate that at this point, but I think I recognize what the Court has in mind when he raises this question, but, certainly, regardless of what we may conclude as to those two or three

1 **REMARKS - Mr.**

1113

2 multimer district counties, I believe that
3 the same thing does not apply to one that has
4 11 representatives, as Lamar County, and another
5 one that has 19, as Dallas County.

6 With that, Your Honor, we rest our

7 case.

8 **JUDGE WOOD:** May I ask one question?

9 **MR. IDEM:** Yes.

10 **JUDGE WOOD:** I notice you distinguish --

11 and I must admit -- I have only had an opportunity

12 reading all the depositions and keeping up with

13 the daily copy -- to read the Alabama case only

14 once, which is a very recent case, but I notice

15 and I see why you brought in the evidence that

16 you are relying on the statement in the case that

17 comments on the fact that Alabama has had such

18 a miserable racial history, but isn't that actually

19 -- isn't that racial history apparent in the case

20 itself where the anti-apportionment has existed

21 in Alabama in virtual contempt of Federal Court

22 Orders for over 11 years and where the Alabama

23 Legislature has repeatedly during the last six

24 years, a concerted effort by the Federal Court --

25 in violation of those Orders has refused to come

1275 - IDAR

1114

up with a plan as late as October of 1971, and admittedly, the plan that they finally did come up with was obviously unconstitutional in that it deviated on the basis of population -- one man-one vote. Even in spite of this, the District three-man Court said that it was reluctant, even under these circumstances, to intrude on the activities of the elected legislators.

Now, in this particular case I think the position of the State of Texas is that they have -- they do not have any such bad history of race, that they are trying to come up with a plan that is reasonable.

Isn't that the position of the State? Are these distinguishing -- now, as I say, I haven't had an opportunity to study the Alabama case in depth, but this is the way I am -- I can distinguish that case from this.

Now, if I am in error, correct me.

MR. IDAR: Your Honor, I am at the same disadvantage. In fact, I read this case while I was listening to the argument from Counsel for the State. Of course, I don't think any of us have had much of an opportunity

1 **Answer - Idar:**

1115

2 to analyze it, but I am intrigued by the
3 sentence that says, "Similarly, we do note
4 that Mitsun was in Indiana, a state with-
5 out the long history of racial discrimination
6 evident in Alabama."

7 Now, the question arises whether by
8 using the term "history of racial discrimina-
9 tion" the Court is talking only about the
10 history of redistricting in Alabama or whether
11 it had in mind other history of discrimination.

12 **JOHN WOOD:** Admittedly, the parties
13 in the case representing the State of Alabama
14 admitted that this mal-apportionment had
15 existed for a period of 11 years in virtual
16 contempt of all the Orders, repeated orders of
17 the Federal Court, refused to do anything
18 about it.

19 **MR. IDAR:** I recognize that.

20 **JOHN WOOD:** I think it was certainly
21 reasonable that the Court came up under those
22 circumstances with that plan, with some plan,
23 when they refused after 11 years to do something
24 about it.

25 **MR. IDAR:** I recognize that, but I

ARGUMENT - Idar

1116

would again point out, Your Honor, that I am not certain whether by the use of this phrase the Court is simply talking about the history of the redistricting issue in Alabama, or whether it was referring to---.

JUDGE WOOD: Thank you. I don't know.

MR. IDAR: And let me just conclude again by saying that it is a matter of degree in Texas. We all recognize that we have made some progress. The fact remains, have we reached that point that the Courts must no longer take these factors into consideration as they apply to the Mexican-American or the black?

JUDGE WOOD: Thank you.

MR. CROUCH: May it please the Court, the Republican Interveners in the Dallas and the Tyler cases would submit that, as I stated at the outset of our case, that we do not contend and are not urging that this Court overrule the Legislative Redistricting Board's Order and declare it unconstitutional because it did not give the Republicans some seats

11117

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in the legislature. We recognize that we come under the burden of *Whitcomb v. Davis*. We think the legal principles of that case clearly would support our position that this statute or this act of the legislative redistricting board is unconstitutional insofar as it relates to Dallas County.

As the testimony has clearly pointed out, there is an area in Dallas County which has a population of 181,000 persons, who have consistently voted for, expressed a preference for Republican legislative candidates. They have consistently voted for and elected Republican State Senators, Justices of the Peace, Congressmen, overwhelmingly voted for all the Republican candidates -- or Republican candidates

for state-wide races, U. S. Senate, Governor on down the ticket. They have elected a Republican County Commissioner since 1960.

Now, interestingly enough, when Mr. Jasevski read the *Chavis* case, he left out one very salient portion of that opinion.

In *Chavis*, according to the State, would hold that you could never challenge the State on

ABSTRACT - Crouch

1118

the question of multi versus single member districts. Yes, we do think the burden is great, but Chavez clearly pointed out, "We have deemed the validity of multimember district systems justiciable, recognizing that they may be subject to challenge, when the circumstances of a particular case may operate to minimize or cancel out the voting strengths of racial or political elements of the voting population."

"Such a tendency, we have said, is enhanced when the district is large."

This Court is called upon to interpret what is a large district. Now, as is evident in the Chavez opinion, Marion County had a population of 741,000 persons. The Court had before it that size district. They specifically upheld in the Hawaii case, the Fortson case, the multimember districts where they had requirements that the representatives live within geographic areas, but even there, the whole population of the state was only 768,000. Each individual representative was charged with representing approximately 15,000 persons. A district half the size of the state, a multimember district which

1 **Shawyer - Cross**

1119

2 included half the state would have only been

3 300,000.

4 Now, in this case we contend that

5 this district, the size of this district, with

6 a million and three hundred thousand persons,

7 tends to cancel out and operates to minimize

8 and dilute the voting strength of those 300,000

9 persons, and we would say that it is by effect

10 -- the effect of it is such that if you look

11 at the voting history, and as the witnesses have

12 testified from 1960 to 1970 Republicans have

13 been elected. Voters have expressed preference

14 for Republican candidates, except for the State

15 legislature, and they are precluded from doing

16 so in Dallas County.

17 By design, certainly, when you look at

18 the entire state plan, because of the distinc-

19 tion and the difference between Harris County.

20 Interestingly enough, the only testimony or the

21 only rationale submitted by the State that can

22 be gleaned from the deposition is that, "We

23 thought the people of Harris County wanted

24 single member districts, but we thought the

25 people of Dallas County wanted a one member

ABSTRACT - Cross

1120

"district," and yet, the evidence is clear that the polls show the people of Dallas County wanted single member districts, favored single member districts, expressed a preference three to one.

The tendency to dilute gets greater, as the Courts said, when the district gets large. Now, our burden would be extremely difficult if the State had announced some guidelines as saying, "All counties over a million people or all counties over 100,000 people, we would break the counties up, but we would keep the smaller ones in a multimember district," but in this case where we have one large county for what seems to me from the testimony presented a very obvious purpose, because it takes the -- and Mr. Javorski, I might say, is concerned about what constitutional principle is involved. Certainly, if the right to vote is not one of the most precious constitutional principles that we have, I don't know what is, and certainly, the right to vote involves more than going into the ballot box and pulling the lever of a voting machine or in casting a vote for one person

1 **ADDRESS - Crown**

1121

2 on the ballot. It involves an effective parti-
3 cipation in the political process, a reasonable
4 opportunity to become a candidate, a reason-
5 able opportunity to have something to say about
6 who is going to be a candidate.

7 Certainly, if by state action the
8 State so discourages candidates from offering
9 themselves to run for office, candidates that
10 the voter wants to vote for, then they effec-
11 tively don't have the right to vote for who
12 they choose, and certainly, I am appalled,
13 really, as I heard some of the testimony about
14 the propositions for the future about the
15 powers that be to get together and decide,
16 "We will have these blacks in the next elec-
17 tion. We will have one Mexican-American on
18 the ticket." That is taking it out of the
19 hands of the 74,000 people.

20 Let's let the people decide who is
21 and effective representative for them, and let's
22 let them make their choice just like the people
23 of Harris County are having the right to make
24 their choice. The State clings to the fact
25 that in Harris County Senator Barbara Jordan

1 **ANSWER - Cross**

1122

2 stated that there were five safe seats for
3 the Negroes.

4 (No omission here.)

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1 **Agreement - Crouch**

2 **1123**

3 Now, that, in itself, is an indication
4 that they will have the right to participate in
5 the election process. Certainly the citizens
6 of Dallas County are denied that opportunity
7 because primarily of its size.

8 Thank you.

9 MR. CROUCH: May it please the Court, at
10 the outset of this matter, as Judge Justice will
11 recall, I attempted to obtain a stipulation to
12 the effect that it was more expensive for a
13 candidate to run as a candidate in a multi-member
14 district than in a single member district; that
15 accountability on behalf of a candidate, both
16 upward and downward to his constituents, was
17 more difficult in a multi-member district than
18 in a single member district; and that there were
19 no objective criteria by which one basic plan of
20 representational government, representative
21 government, should be applied to Dallas County
22 and another to Harris County, and I was unable to
23 obtain that stipulation.

24 I think it has now been established
25 that all of these things are so. I do not believe
there has been any evidence to the contrary of any

Argument - Crouch

1124

significance on any of these points. There is no difference between Harris County and Dallas County of any significance, except that partisan political considerations. Two different plans of representative government have been applied.

Now in representing the Republicans, and I think perhaps to this extent at least, I can speak for the other minority groups before the Court. I would say that we certainly have no right to use our minority status as a sword or to urge that we are entitled to some special privilege or some safe district or to elect candidates. Of course, we are not entitled to that. But I think we are, to some extent, may it please the Court, entitled to use it as a shield.

In the Abate case, which has been referred to at considerable length, the Court, itself, the Supreme Court, states that the plan which it was approving, a local plan, by the way, does not contain a built in bias tending to favor particular political interest or geographical areas.

I would suggest to the Court with

Argument - Crouch

respect that there are simply too many fish in this bottle of milk. When a witness put on the stand by the State can testify as to Senatorial District 21, it appears to him to be an over instance of political gerrymandering, when maps pulled into evidence, Exhibit 9, placed in by us, prepared by the County Clerk's office in Dallas County, Texas, are mailed to the legislature, prior to the legislature's attempt to reorganize the State, sending the voting patterns in their moves so that there can be taken into consideration, presumably in voting upon the plan, I would suggest to, may it please the Court, that winning one election confers entirely enough benefits on the successful candidate. If we stop short of placing him in a position to insure that he will win all the future elections as well by permitting him to gerrymander so that his political opponents are effectively reduced to a status of no hope.

So now on the subject of gerrymandering. I want to pass to the second point, which I would like to make.

WILLIAM A. MOORE & ASSOCIATES, INC.

COUNTY REPORTERS

NATIONAL BUREAU OF CHARTERED BUILDINGS

MEMPHIS, TENNESSEE

Argument - Cross

1126

There is, as I have said, no evidence to show any objective difference between Harris County and Dallas County in this case. I have asked these questions over and over of several witnesses, perhaps too frequently, thinking that at some time, perhaps, the State would see fit to come forward with some showing that there was a reason for this choice of a different representational system for the two similar situations. All ready, as has been noted earlier, characterized by the State, itself, it is similar. "When the metropolitan county goes over a million, we will adopt a single member districts." Well, this has not been done.

A great point has been made, if I may divorce for just a moment, and I am almost through, of the fact that the State feels itself to be in sort of a median lane -- a come and get it -- position. I would suggest that the State is incorrect. Quite aside from what Mr. Walker stated earlier about where the median goes when equal

Argument - Crouch

2211

are placed in issue, in the Alabama case,

which I suppose is best called *Sims v. Arnold*, the court characterizes, and I

think correctly, the decisions of the

United States Supreme Court on this issue,

I think at pages eleven and twelve. Its

third basic principle is, "any deviation

from the ideal of one man-one vote must be

justified by the State as fostering the

affortation of a legitimate State policy."

Now, if I may ask a rhetorical question,

is the legitimate State policy? We have not

seen it, or if we have, it has certainly

passed by us in the night.

I will say no more on that subject.

I do want to say a word about population

deviation.

The State seems to have suffered

the State which Mr. Justice Marshall found it

would suffer when he stated in it that the

11.8 percent was not to be taken as a primary

criteria, and in the other paragraph

of the Supreme Court, where it is stated over

and over, the ideal is one-man vote and anything

Argument - Crouch

1128

different from that must be justified. Here

we have what amounts to an admitted ten

percent deviation, or 9.9 percent, in a

State districting situation. Now in the

Abate case, the court emphasizes that this

was a local governmental situation within

a county; that peculiar situations of inter-

locking function were and always have been

in this county, and even there, 11.9 percent

was all which the court was willing to

accept and it is emphasized that nothing

beyond that was to be taken as approved in

any way, nor was this to be taken -- in fact

the court stated that in the legislative

context, it was dubious that even such a

deviation as that would be appropriate.

Argument - One

1129

I don't know how to answer Judge Wood's observation about the 11 years' continuance by the Alabama Court, except to say that if we are presently embarking upon an 11 year effort, it is well that we commenced when we did.

The Legislature of Texas came to be unable to produce a constitution plan. The effort has already been made, and if I say so, the plan which was invalidated by the Supreme Court of Texas was not only unconstitutional; it was inferior. I invite the Court's attention to it.

Another effort has now been made. It is an honest effort to ride the horse as far as it possibly can be ridden, to carry under the political interest of the State whenever this can be done, and

I suggest, and Dr. McClosky testified, that the situation in Texas is far closer to the situation in Alabama than it is to the situation in Indiana, and that is the only testimony in this record on that subject.

MR. BAKER: Briefly, in

1130

Argument - Escan

summarizing the San Antonio Republican case, we feel that the evidence will show that the witnesses, the expert witnesses, all of whom were put on by other parties to this suit, testified relatively to the same things in Bexar County as to being existing in Dallas County, and in regard to the problems involving multi-member and single member districts, as to cast, the closeness of the candidates to his constituency, the identifiable areas, et cetera.

The San Antonio single member district legislative plan has been -- or legislative problem, has been not pretty well by the others, and I won't dwell on it.

As far as the Senate districts 21, 19 and 24, which are the second basis of our suit, we used Van Amher, as a witness who testified as to the areas with various exhibits. And the State used three witnesses; Mr. Ray Harrison, Gilbert Guss

GCR

Argument - Green

1131

and Representative Silber. I thought
 ex-Secretary of State Ray Brown made
 an excellent witness and incidentally,
 all three of these gentlemen stated
 that in their opinion, there was no
 community of interest between the north-
 east portion of San Antonio, the north
 part of Bexar County, and the lower part
 of District 21 around Starr, Jim Hogg,
 Bexar and Bexley Counties.

My recollection of the testi-
 mony is that Mr. Brown volunteered that
 he could not imagine a district being chosen
 that would have less community of interest.

Mr. Brown and Mr. Green each favored
 single member districts. Mr. Brown
 stated, as I recall, that in single
 member districts, they would have one or
 two Republicans and two Mexican-Americans
 and one Negro, and each of the men testi-
 fied along these lines.

They all stated that they did not
 feel that the District was corrupt.

I would like to say a few words in

Argument - Mason

1132

response to the allegations of the
 defense. In attempting to meet the
 constitutional requirements and to
 differentiate between the instant
 cases and the Davis case, my interpretation of the Davis case, as set out
 in my trial brief, is along the lines
 that was just pointed out by one of the
 other counsels, is that it would be
 disturbed -- the redistricting would
 be disturbed only upon specific proof
 that the adopted scheme of districting
 is actually functioning in a manner
 that minimizes or cancels out the voting
 strength of the cognizable, racial or
 political elements of the voting population.
 If this be the test, I think the
 record is replete with distinctions
 between the instant cases and the Davis
 case.

I feel that there have been
 many witnesses and much testimony which
 will show there has been a minimization,
 dilution or cancelling out of the votes

Argument - Bacon

in both Dallas and Bexar County, or possibly otherwise.

Mr. McDonald made a point a while ago to the effect that the Mexican-American was not a minority and that they had selected State Representatives.

Now, I don't know whether it was because of oversight or whether he didn't feel that it was worth mentioning, but I feel that the Republicans of Bexar County are a minority and they have not elected a State Representative. And as I understand the Clevin doctrine to be, where the voting strength of a cognizable, racial or political element of the voting population -- there is much testimony to the effect that there is an identifiable Republican area in Bexar County and in San Antonio.

I will finish by stating the rest of the testimony I think speaks for itself. I implore the Court to read with particularity some of the depositions which I know that they will.

Argument - Rosen

1134

upon which a large part of our case
is based,

It is my opinion that the time
element that the Redistricting Board had
was a great deterrent in putting enough
attention, supervision, control, direction
and interest by the Board members in the
actual drafting of the plans.

1 **ALBUQUERQUE - Santa Fe, N.M. - (Continued) - 1296**

1135

2 It was testified to on more than
3 one occasion that it would be practically
4 impossible to have put single member districts
5 into the various metropolitan areas in the time
6 prescribed. This was by the man that drafted
7 the plan. He had almost no direction, super-
8 vision or control or even interest on the part
9 of the members of the Board.

10 I will end by saying, I know it has
11 been a hard deal for all of us and to you Mr.
12 Idar's mention while ago about the plateau
13 that we have arrived at, I just hope that we
14 have reached a civilization plateau of under-
15 standing and fair play that not only dictates
16 one man-one vote, but one brown man-one vote,
17 one black man-one vote, and God willing and
18 this Honorable Court willing, even one Repub-
19 lican-one vote.

20 **(LAUGHTER)**

21 **JUDGE COLONIER:** Have we constitu-
22 tionally exhausted ourselves at this point?
23 Is there anyone else who wants to be heard?

24 **(REPORTER'S NOTE:** There was
25

1 **ARGUMENT - RECESS**

1136

2 no audible response.)

3
4 **JUDGE GOLDENBERG:** If not, the

5 Court will take a 15-minute recess, and
6 then we will return and discuss what we
7 will expect of you.

8
9 **(REPORTER'S NOTE:** The Court then,
10 at 2:55 o'clock, P.M., January 6,
11 1972, recessed until 3:15 o'clock,
12 P.M., the same date, at which time
13 it reconvened.)

14
15 **JUDGE JUSTICE:** Please be seated.

16 **JUDGE GOLDENBERG:** I think it goes
17 without saying that the Court is truly indebted
18 to everyone for the cooperation and your night-
19 and-day work to bring this case to the status
20 in which it finds itself today, and we are
21 deeply, deeply grateful and appreciative,
22 and without that cooperation, why, we would
23 not have been able to discharge our consti-
24 tutional mandate, and I want everyone to know
25 that we each of us shall long remember that

you were a great help to us.

1137

We realize that you have worked very hard, worked continuously, worked into the night. What I am going to suggest now will probably call for some more -- I hate to count more of you, but I really don't know what to do except to ask for your continued cooperation for the next period of time, if we are to live under the constitutional mandate that I know every one of you wants us to measure up to and fulfill.

We have had three days of trial. You have had hundreds of exhibits, numerous depositions. We have had countless theories. We have had confusing precedents. We have had everything that goes into a trial that sometimes takes months.

We are going to ask each and every one of you to prepare and file, one with the Clerk and a copy to each of our home stations, to be filed not later than tomorrow week, the 10th, a brief or a memorandum which will summarize what happened in this courtroom for the past three days, giving us the benefit of your wisdom, your knowledge and everything

that you can bring to the case, suggest to 1138
 us proposed Findings and Conclusions which
 you think are impelled by what has happened
 in this courtroom during the past three days---.

JUDGE WOOD: Four days.

JUDGE GOLDEN: Four days.

I am going to make a further sugges-
 tion that those of you who are dissatisfied --
 but, first, those of you who are dissatisfied
 with the redistricting plan as it now exists
 give us the benefit of how you think a plan
 should be devised that meets the constitutional
 requirements.

The State of Texas, without even the
 slightest prejudice, if you feel that even
 if we should be mistaken, we can make a mistake,
 could come to a conclusion that perhaps that
 is a violation here or there. Even though you
 think the plan is impracticable, that every
 aspect and in every respect, if you feel that
 you can help us by suggesting by whatever
 preamble and caveat you want to start with,
 "why we think it is perfect, the following
 would be our suggestions, if in your own
 wisdom you should think otherwise," because

we want the benefit of whatever thinking you might have.

I don't want to put you under the compulsion of submitting such a thing with the idea that you are suggesting that there is anything wrong. On the other hand if we only receive plans from the other side, and we should put them into effect, we would not have the benefit of whatever criticisms or suggestions you might have.

On the other hand, if we waited to see their plans and then submitted them to you and asked for more time, we would still be running into the time factor that has been plaguing us throughout this entire trial, and I want you to clearly understand that if you did suggest anything that it would be with the complete understanding that you are not suggesting that there is anything wrong constitutionally with what has been done.

I know this is an onerous burden.

I hate to place it upon you, because you are busy now with many, many things to do.

This is an important case and one

1 of the most important that I have set on 1140
2 since I have been on the bench, and each
3 of us here feels a very keen responsibility
4 that what we do will affect the political
5 processes of this state, and there is one
6 thing we want to be certain about. We want
7 to be right. We want to be fair. We want
8 to be just, and we solicit your help and
9 support in helping us come to that result.

10 If there are any questions, I
11 will try to answer them.

12 MR. IDAR: Your Honor, I would like
13 to call one matter to the Court's attention.

14 During the noon recess that long
15 awaited information from the census reached
16 the Clerk's Office. This is the census
17 relating to Bexar County for 1970, which
18 presumably has demography data and break-
19 down by ethnic population as it relates to
20 the Mexican-American. It has been in the
21 custody of the Clerk and the Court here
22 since it arrived. It has a cover letter
23 from an official of the Census Bureau. Mr.
24 McDaniel is aware of it, and at this time I
25 would like to tender it in evidence in the

hope that the Court can derive some benefit

1141

out of that information, assuming that it
should become applicable in the eventuality
that a plan was to be looked into with the
purpose of redistricting that particular
county, at least.

(REPORTER'S NOTE: The Court
here came out of the hearing
of the court reporter.)

JUDGE GOLDHORN: I understood that

this was to be admitted subject to any
written objection that you wish to make to
it. Is that right, Mr. McDaniel?

MR. McDANIEL: Yes, I have no parti-
cular objection to this particular information.

It is census information, Your Honor. I was
going to suggest to Mr. Idar, because I know
that he got it today, and I suspect this is
the only copy that he has, that rather than
submit it to the Court now, with the Court's
permission, we might retain it in our posses-
sion and file it with the Clerk tomorrow and
have it copied in the interim.

1 MR. IDAR: That's perfectly all 1142
2 right with me, Your Honor.

3 JUDGE GOLDEN: That will be just
4 fine. I think that is an excellent sugges-
5 tion.

6 MR. IDAR: Shall we mark it as
7 an exhibit, XI-21?

8 JUDGE GOLDEN: In order that
9 everyone may have our home stations, I want
10 to ask Judge Justice to give you his address.

11 JUDGE JUSTICE: My address is Post
12 Office Box 330, Tyler, Texas, 75701.

13 JUDGE GOLDEN: Judge Wood?

14 JUDGE WOOD: Mine is Post Office
15 Box 1040, just like your tax return, San
16 Antonio, 78294.

17 JUDGE GOLDEN: My address is 1100
18 Commerce Street, Dallas, Texas 75202.

19 Is there anything else anybody wants
20 to add?

21 MR. CLOMER: May it please the Court,
22 we have one further matter, and that is the
23 Order under Rule 23 for the class action.

24 JUDGE JUSTICE: You may submit it
25 to me in Chambers.

MR. CLARK: O. K., fine. I just

didn't want everybody to get dispersed.

THANKS: Once again, our

sincere thanks and appreciation.

The matter is taken under advice-

ment, and we stand adjourned.

(REPORTER'S NOTE: The Court then,

at 3:24 o'clock, P.M., January 6,

1972, adjourned.)

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